CORPORATE CAMPAIGNS AND THE NLRB: THE IMPACT OF UNION PRESSURE ON JOB CREATION

HEARING

BEFORE THE

SUBCOMMITTEE ON HEALTH,
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COMMITTEE ON EDUCATION
AND THE WORKFORCE

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C O N T E N T S

CORPORATE CAMPAIGNS AND THE NLRB: THE IMPACT OF UNION PRESSURE ON JOB CREATION

Thursday, May 26, 2011
U.S. House of Representatives
Subcommittee on Health, Employment, Labor and Pensions
Committee on Education and the Workforce
Washington, DC

The subcommittee met, pursuant to call, at 10:00 a.m., in room 2175, Rayburn House Office Building, Hon. Phil Roe [chairman of the subcommittee] presiding.

Present: Representatives Roe, Wilson, Thompson, Walberg, DesJarlais, Hanna, Rokita, Bucshon, Noem, Andrews, Kucinich, Kildee, Hinojosa, Tierney, Holt, and Scott.

Also Present: Representatives Kline, Gowdy, and Miller.

Staff Present: Katherine Bathgate, Press Assistant/New Media Coordinator; Casey Buboltz, Coalitions and Member Services Coordinator; Ed Gilroy, Director of Workforce Policy; Benjamin Hoog, Legislative Assistant; Marvin Kaplan, Professional Staff Member; Barrett Karr, Staff Director; Ryan Kearney, Legislative Assistant; Brian Newell, Deputy Communications Director; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Ken Serafin, Workforce Policy Counsel; Linda Stevens, Chief Clerk/Assistant to the General Counsel; Loren Sweatt, Professional Staff Member; Aaron Albright, Minority Communications Director for Labor; Kate Ahlgren, Minority Investigative Counsel; Tylease Alli, Minority Hearing Clerk; Jody Calemine, Minority Staff Director; John D'Elia, Minority Staff Assistant; Brian Levin, Minority New Media Press Assistant; Jerrica Mathis, Minority Legislative Fellow, Labor; Richard Miller, Minority Senior Labor Policy Advisor; Megan O'Reilly, Minority General Counsel; Julie Peller, Minority Deputy Staff Director; and Meredith Regine, Minority Labor Policy Associate.

Chairman ROE. A quorum being present, the Subcommittee on Health, Employment, Labor, and Pensions will come to order.

Good morning, everyone.

And welcome to our witnesses. And thank you for joining us today.

Today, we will examine the role of the National Labor Relations Board in corporate campaigns.

I realize this is a general definition of the term, but a corporate campaign is a union effort to disrupt the employer's routine busi-

ness. The campaign can take the form of negative advertising, complaints against employers with various government agencies, and can even include appeals to political and religious leaders to put pressure on a targeted employer.

The intent of these tactics is to undermine the reputation as well as break the will of an employer who refuses to accept union demands. In some cases, an employer can either concede to the demands that may undermine the success of his or her business or accept public contempt, government penalties, outside interference, and extraordinary litigation costs. Regardless of the potential outcomes, these campaigns can have a detrimental impact on the business' bottom line and threaten the livelihoods of its workers.

Over the years, the use of corporate campaigns has accelerated. According to one study, between 1974 and 1999, only 200 corporate campaigns were identified. Yet, in 2005, it was estimated that between 15 and 20 corporate campaigns were under way at any given time.

And, recently, the NLRB has taken a number of steps to expand the arsenal of tactics available for a corporate campaign. The Board has removed bannering restrictions previously placed on boycotts of neutral employers. Employees of on-site contractors have been granted greater access to the property of the contracting employer connected to an organizing activity. The Board has also requested briefs that would allow even greater access to an employer's property.

In one case, the Board moved to uphold an election tainted by intimidation of workers because the intimidation originated with nonparties to the election. According to the Board's logic, the outcome of an election can be overturned only when the threats by nonparties are "so aggravated as to create a general atmosphere of fear and reprisals, rendering a free election impossible," end quote.

Who will determine when a, quote, "general atmosphere of fear and reprisals," end quote, exists? The worker who receives an anonymous call at their home or hears a voice promising to get even if the worker opposes union representation? Or a Federal bureaucrat?

Actions taken by the Federal Government can send shockwaves across the country. At a time when our economy is struggling to get back on its feet and millions are desperate for jobs, employers and workers are paying close attention to the actions taken by leaders here in Washington. Policymakers in the Nation's capital must understand that even the most modest action can have a dramatic effect on our economy.

The action taken by the NLRB against the Boeing Company is a good example. While the facts are still in dispute, the outcome of the case may significantly alter the manner in which employers invest in our economy and our workforce. I recognize the case is in the early stages of what will be a costly litigation, but I wonder if anyone seriously doubts the tremendous implications this case poses to our workforce and could possibly deny Congress' responsibility to consider those implications, ask questions, and determine what is the best interest of our workers and their families.

Although this is just one of many cases presented to the NLRB, we must remember the Board does not operate in a vacuum. It is

an arm of the Federal Government, and its decisions govern virtually every private workplace in the Nation. That is a tremendous power that comes with great responsibility to act on behalf of the public good. I am concerned that the Board has jettisoned this responsibility over the last 2 years in favor of an activist agenda designed to advance the cause of big labor over the rights of everyday workers.

The committee has pledged to make job creation and American competitiveness the leading priorities. We have a job to do, and it includes overseeing the various boards, agencies, and departments within our jurisdiction to ensure that they do not undermine the strength of our workforce. Today's hearing is an important part of that effort.

I would like to thank you all, the witnesses, again for your participation and will now yield to Mr. Andrews, our senior Democratic member of the subcommittee, for his opening remarks.

Mr. Andrews?

[The statement of Chairman Roe follows:]

Prepared Statement of Hon. David P. Roe, M.D., Chairman, Subcommittee on Health, Employment, Labor and Pensions

Good morning everyone. Welcome to our witnesses; thank you for joining us today.

Today we will examine the role of the National Labor Relations Board in corporate campaigns. I realize this is a general definition of the term, but a corporate campaign is a union effort to disrupt an employer's routine business. The campaign can take the form of negative advertising, complaints filed against employers with various government agencies, and can even include appeals to political and religious leaders to put pressure on a targeted employer.

The intent of these tactics is to undermine the reputation as well as break the will of an employer who refuses to accept union demands. In some cases, an employer can either concede to demands that may undermine the success of his or her business, or accept public contempt, government penalties, outside interference, and extraordinary litigation costs. Regardless of the potential outcomes, these campaigns can have a detrimental impact on a business' bottom line and threaten the livelihood of its workers.

Over the years the use of corporate campaigns has accelerated. According to one study, between 1974 and 1999, only 200 corporate campaigns were identified. Yet in 2005 it was estimated that between 15 and 20 corporate campaigns were underway at any given time. And recently the National Labor Relations Board has taken a number of steps to expand the arsenal of tactics available for a corporate campaign.

The board has removed bannering restrictions previously placed on boycotts of neutral employers. Employees of onsite contractors have been granted greater access to the property of the contracting employer connected to organizing activity. The board has also requested briefs that could allow even greater access to an employer's property.

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our workforce. I recognize the case is in the early stages of what will be costly litigation. But I wonder if anyone seriously doubts the tremendous implications this case poses to our workforce, and could possibly deny Congress' responsibility to consider those implications, ask questions, and determine what is in the best interest of our workers and their families.

Although this is just one of many cases presented to the NLRB, we must remember the board does not operate in a vacuum. It is an arm of the federal government, and its decisions govern virtually every private workplace in the nation. That is tremendous power that comes with a great responsibility to act on behalf of the public good. I am concerned the board has jettisoned this responsibility over the last two years in favor of an activist agenda designed to advance the cause of Big Labor over the rights of every day workers.

The committee has pledged to make job creation and American competitiveness its leading priorities. We have a job to do and that includes overseeing the various boards, agencies, and departments within our jurisdiction to ensure they do not undermine the strength of our workforce. Today's hearing is an important part of that effort.

I would like to thank the witnesses again for their participation today, and will now yield to Mr. Andrews, the senior Democrat member of the subcommittee, for his opening remarks.

Mr. ANDREWS. Good morning, Mr. Chairman.

Good morning to the witnesses.

And good morning, ladies and gentlemen.

As I think about this hearing, I reflect upon a question that we should be asking, a question for which I think the answer is well-settled, and some questions that we shouldn't be asking.

The question we should be asking is, how can we work together, as Republicans and Democrats, to address the problem that nearly 15 million Americans are unemployed as we meet here this morning? How can we come together and find ways to improve our investment climate, our business climate, our labor climate, so that we can put Americans back to work? I think the chairman was correct in saying that that should be the major focus of the committee. I just regret the fact that it really hasn't been. Not one jobs bill has come before this committee since January when the new majority took over.

The second question that I think is a settled question is, when people in our system have a political dispute, when they disagree with each other over something, do they have the right to express themselves as to how they feel about that dispute? I think the answer is unequivocally, yes, they do, under the First Amendment of our Constitution, that if you hold strongly a political view, you have the right to express it. You certainly don't have the right to stop someone else from expressing their view; you don't have the right to defame someone. But you have the right to express your views.

And some of the testimony we are going to hear this morning, I think, is actually an excellent example of the First Amendment at work, that you have one group that feels one way about a dispute and another group that feels another way about a dispute, and they take their disagreement to the public square and they make their point, and we settle our differences that way.

So I think that this underlying notion that there is something unusual about political speech that involves a labor dispute is, in and of itself, unusual. I think the operating premise of our country is, people have the right to express themselves, and should express themselves, politically because it contributes to our dialogue.

And then there is the third question I don't think we should be asking. The chairman said a few minutes ago about the Boeing case that the facts are still in dispute, I believe was the phrase that he used. Well, certainly, it is where the facts are in dispute that really needs to be noted. The facts are in dispute in front of an administrative law judge that will begin conducting a trial on June the 14th.

So here is a situation where there is pending litigation before an administrative law judge, where the general counsel of the NLRB has made a decision to pursue an argument in that forum, and that argument is being vigorously defended by the other side in that forum. In the normal course of action, it would be that the judge who runs that forum would make a decision and the issue would run its course. If people disagree with the decision, they could take it eventually to the Federal court system, and the courts will decide who is right and who is wrong. And then we would have the opportunity to decide if we want to, in some way, alter or improve the law based upon the outcome of that decision.

This is perhaps the most egregious example of putting the legislative cart before the litigation horse. There has been no decision in the Boeing case. The general counsel has pursued a claim; that claim will be litigated starting on the 14th of June, and a decision will be rendered.

What I find the question is that we should not be asking is the question that, frankly, the chairman of the full committee and the chairman of the Committee on Oversight have been asking, which is for the general counsel to turn over his work product, his attorney deliberations, his trial strategy before the 14th of June. I think this is irregular. I think it is inappropriate. And I think that we should let the process go the way that it plays out.

So we, Mr. Chairman, would rather this morning be talking about cooperating in ways that would create jobs, but we are once again having a hearing where we are rehashing some questions that I think have been settled and some questions that aren't ours to settle.

But, with that in mind, we are glad the witnesses are here, and we look forward to robust dialogue. And thank you for the hearing.

Chairman ROE. Thank you to the ranking member.

It is now my pleasure to introduce our distinguished panel of witnesses. First, let me turn to my colleague from Indiana, Mr. Rokita, to introduce our first witness.

Mr. Rokita?

Mr. ROKITA. Thank you, Mr. Chairman.

It is my honor to introduce my friend and a great Hoosier, Mr. Dave Bego.

Dave is the president and CEO and the founder of Executive Management Services in Indianapolis. He is an industry leader in the field of environmental workplace maintenance, which he founded in 1989. EMS prides itself on providing clients a single-source solution for commercial cleaning, facility services management, maintenance supply, security, and even landscaping.

By 2006, EMS, Mr. Chairman, had grown to become a national company with approximately 5,000 employees servicing over 3,000

facilities. That same year, the SEIU started a corporate campaign to organize EMS employees, which only recently concluded.

Given that experience, he has been able to share his story through his book, "The Devil At My Doorstep," which, Mr. Chairman, he asks me about once a month if I have read it. I read most of it. But the fact is, Mr. Chairman, I have lived this story with Dave Bego.

And I thank him for his leadership. Instead of cowering or not being able to afford the cost of his story, like so many captains of industry do, he took the offensive and filed what I believe to be over 30 pieces of litigation, at the administrative and other levels, to fight back, and he won every case.

Thank you. I yield back.

Chairman ROE. I thank the gentleman.

And welcome, Mr. Bego.

Mr. CHEt Karnas, our next witness, is the founder and president of Lone Sun Builders, Inc. Lone Sun Builders is a licensed general contractor located in Albuquerque, New Mexico, specializing in commercial construction and remodeling. In 2004, the United Brotherhood of Carpenters initiated a corporate campaign against Lone Sun Builders, mailing negative letters to his clients and bannering his work sites.

Welcome.

Ms. CATHERINe Fisk is professor at the University of California Irvine School of Law. Ms. Fisk is an expert in labor and employment law. She has authored three books: "Labor and Law in the Contemporary Workplace," "Labor Law Stories," and "The Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property." Ms. Fisk received her BA from Princeton University, JD from the University of California-Berkeley, and LLM from the University of Wisconsin.

And welcome to the committee.

Mr. JONATHAn Fritts is partner of Morgan Lewis' labor and employment practice. Mr. Fritts' practice encompasses a broad range of labor and employment law matters, with a particular emphasis on labor matters arising under the NLRA and the Railway Labor Act. He is regional co-chair of the American Bar Association Committee on Practice and Procedure under the NLRA and an adjunct professor at Georgetown University Law Center. Mr. Fritts received his BA from the University of Virginia and his JD from Georgetown University Law Center.

Welcome to the committee.

Pursuant to Committee Rule 7(c), all Members will be permitted to submit written statements to be included in the permanent hearing record. And, without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted for the official hearing record.

[The information follows:]

Prepared Statement of Hon. Joe Wilson, a Representative in Congress From the State of South Carolina

Mr. Chairman, thank you for holding a hearing on corporate campaigns and the National Labor Relations Board. I would also like to thank Dave Bego, Chet Karnas, Jonathan Fritts, and Catherine Fisk for coming to speak with us this morning.

From the moment the 112th Congress began, one of the main focuses for House Republicans has been to address job creation and job growth. Earlier this month, the U.S. Department of Labor announced that the national unemployment rate is 9.0 percent. This means over 13 million Americans are currently unemployed. That is why I am so concerned with the unemployment situation in our country, specifically in South Carolina. Recently, my home state has served as the center of a controversial holding involving the executive branch and a large manufacturer that has created thousands of jobs across the country.

Businesses should have a right to contract where to work in the best interest of their shareholders and workers. We are now in an age that is unprecedented: the Boeing complaint is a threat to all right-to-work states, not just South Carolina.

Being a right to work state means employees in those states can choose for themselves whether or not to join a union. The NLRB decided to file a complaint against Boeing on behalf of a union, the International Association of Machinists and Aerospace Workers District Lodge No. 751. The complaint alleges Boeing "transferred work" of its 787 Dreamliner assembly line from Washington state to South Carolina. However, not one single union employee suffered a detriment due to Boeing's decision to relocate. I believe this pursuit by the NLRB will be resolved quickly.

I hope this hearing will provide clarity to these issues. I look forward to hearing what you all have to say on how we can move forward to focus on creating a climate that promotes job growth and job creation.

I would like to ask a question of Mr. Fritts:

1. In 2009, over 16,000 unfair labor practice charges were filed against employers. Approximately a third of the charges were found to have merit and only a portion of those resulted in an unfair labor practice conviction. How many unfair labor practice complaints have you defended? How many of those complaints were found to have merit? On average, how much does it cost an employer to defend an unfair labor practice charge? How can Congress stop frivolous administrative complaints?

Chairman ROE. Now, before I recognize each of you to provide your testimony, let me briefly explain the lighting system. You will each have 5 minutes to present your testimony. When you begin, the light in front of you will turn green. When 1 minute is left, the light will turn yellow. And when your time has expired, the light will turn red, at which point I would ask you to wrap up your remarks as best you can. And the chair will try to do the same thing.

After everyone has testified, Members will have 5 minutes to ask questions of the panel.

And now we begin. I would like to recognize the witnesses. I would like to start with Mr. Bego.

STATEMENT OF DAVID A. BEGO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, EXECUTIVE MANAGEMENT SERVICES, INC.

Mr. BEGO. Well, thank you, Chairman Roe, distinguished members of the committee.

Todd, thank you very much. You stole about the first 1 minute of my speech.

I thank you for having me here today. I think my story is not unique across this country. In fact, I think it is buried a lot. And I think everybody, including the people in this room, need to understand what happens with corporate campaigns.

Before I go on, though, I would like you all to know that I am not anti-union. Before I started Executive Management Services in 1989, I worked for an agribusiness company out of Fort Wayne, Indiana, where I ran soybean processing plants and feed mills and grain elevators for almost 8 years. And I was kind of their turnaround specialist; I would have to go into plants that were underperforming and fix them.

Invariably, what I found was that the processes, machinery, and everything was not the problem. The problem was, the people weren't engaged. And I spent a lot of time working with the people, getting the management staff working with the people, cleaning up break rooms and locker rooms, and turning the workforce around.

Now, the key to this: Every one of those plants were union plants—Teamsters, grain millers, and others. I never had any problems with the rank-and-file union members. What I am about to talk about in the corporate campaign is really about big labor. It is not the rank and file.

As Todd said, I started the company in 1989. It was just myself and my wife, and we started out with a $30,000 investment in our savings account. And we progressed through the years, and, from my management style and perspective, in an entry-level-position company, which we are, we needed to take care of our employees. We started out offering health care and other benefits in the mid-1990s. We continued to grow until, by 2005, at that point we were about 4,000 people in about 33 States.

And then the devil knocked at my doorstep, in the form of the Service Employees International Union, the SEIU. I received a letter from them that they wanted to talk to me about the benefits they could bring. I had a meeting with them, and at the meeting all the guy would tell me was, "I want you to sign a neutrality agreement." And for those of you who don't know what a neutrality agreement is—and, by the way, he didn't have one with him; he just wanted me to sign it. And I told him, "I have to read it first."

When he finally gave it to me about a month later, it is the genesis of the Employee Free Choice Act, card check. It has eliminated secret-ballot elections, has a gag order on the employers, expedites arbitration and contract negotiation. And one of the most fundamentally onerous provisions I have ever seen is you have to give a list of all your employees and their home addresses. Because it reverts to card check, that is so they could go and beat on their doors and intimidate them into signing cards.

And if you don't think it is true, I invite you to read my book and the stories that are in it about it, because they did it to some of my employees anyway. I wrote the book because I was appalled at the tactics and the ruthlessness that they used against my employees, my customers, my company, and my family.

You have to understand something about this. Corporate campaigns, for the most part, are not because the employees invited the unions to come in. And I would guess somewhere in the 90-percent-plus range. It is a business model. What they do is they target an area like ours, in 2005-2006, it was Indianapolis, Cincinnati, and Columbus, Ohio, and they also came after us in St. Louis and Pittsburgh. They look at it and say, "If we can organize this many janitors, we can make this much money off of it."

When I finally met with them the last time before the war started, I said, "Look, why don't we just have an election?" And they said, "No, we don't want to have an election. We want you to sign the neutrality agreement." And an employee from the Service Employees International Union looked at me and he says, "Mr. Bego, you are not going to see the neutrality agreement, are you?" I said, "I have no intention of signing it. It is morally wrong. I cannot take

my employees' free choice away by eliminating the secret-ballot elections. If you are going to have an election, fine." He said, no. He looked at me and said, "We enjoy conversation, but we embrace confrontation. We are going to attack you, your employees, and your customers in the next 90 days."

That was a 5-year war that we won. And you know something? Today, our employees enjoy better wages and better benefits. They don't pay union dues. And I feel sorry for all my competitors who gave in and signed, because I will tell you, they are sorry too.

[The statement of Mr. Bego follows:]

Prepared Statement of David A. Bego, President and CEO, Executive Management Services, Inc.

CHAIRMAN ROE AND DISTINGUISHED MEMBERS OF THE COMMITTEE: My name is David A. Bego. For the past twenty (20) plus years, I have been the president and CEO of Executive Management Services, Inc. (hereafter, "EMS"), a janitorial and facilities maintenance company headquartered in Indianapolis, Indiana, which I founded in 1989. I appreciate the invitation and the opportunity to speak to you on a topic on which I have, unfortunately, become quite familiar. From 2005 through 2008, EMS was subjected to a vicious corporate campaign by the Service Employees International Union, Local 3, based, at the time, in Cleveland, Ohio. While the campaign ultimately failed, it was at a substantial cost, both in the financial sense, and in terms of reputational and relationship damage. In light of these experiences, I have become an advocate against forced unionism, against legislation providing political favor to labor unions, and against the current labor board's agenda to empower Big Labor.

Introduction

I began EMS as a young entrepreneur with $30,000 and a dream of running a first-class company. Through hard work and good luck, EMS fulfilled my dream. EMS now has approximately 4,000 employees, maintains branch operations in twenty-two states, and services companies in thirty-eight states, as far east as New Jersey, and as far west as Utah. The EMS business model is to contract with companies for the provision of janitorial and maintenance services, to place our employees into customer facilities to provide such service, and to provide first class service through superior training and the proper tools and equipment. Unlike many of our competitors, our benefit is not necessarily reflected in the pricing. We do not cut corners to provide price advantages. Rather our edge is in our people, in the quality of our services, and in our ability to meet almost any customer need.

Our company is unique in that, in addition to standard office cleaning, we also provide such services in industrial and other environments with unique needs. We provide our services in steel mills, in processing plants, in laboratories and medical offices, and in educational settings, in addition to the standard commercial office environment.

We are on the forefront of the "green" movement. EMS is one of only two companies headquartered in the state of Indiana to obtain the GS-42 certification for green cleaning from "Green Seal," a non-profit organization devoted to setting environmental standards for cleaning, and promoting the use of environmentally responsible products, as well as providing education and training on environmentally friendly cleaning services and products. Such certification assures its customers that EMS is on the forefront of providing healthy and environmentally friendly services.

I am not a person who is anti-union by nature. Nor am I one who believes that labor unions have necessarily exhausted their usefulness. Prior to my founding of EMS, I was employed by Central Soya as a supervisor in an experimental feed mill. As supervisor, I often supervised union employees. My perspective was that it did not matter whether the employees were union or not. To operate the mill effectively, the employees needed a clean and safe working environment, they needed to be treated fairly, and they needed to have the belief that management respected them. This philosophy served me well, as I was recognized as an individual with a unique ability to turn around problem mills and make them highly productive. In retrospect, perhaps this "ability" was not unique at all, rather just a philosophical belief in abiding by the "Golden Rule." Such treatment should be applied to all employees, union or not. For purposes of full disclosure, I believe that there are situations, particularly where employees are in work environments, which involve substantial threats to their safety or health, that labor unions fulfill a great need to maximize

worker safety. However, the existence of a union alone does not necessarily make one position better than an equivalent position without union representation.

Unfortunately, events that have transpired over the past five to six years have made me aware of the efforts of certain labor unions attempt to impose forced unionism. This is an effort by labor unions, not to organize employees based on employee needs, but rather to organize companies, or at a minimum, subdivisions of a company, for the purpose of increasing membership and, ultimately, the union's political power. While the union rhetoric remains that they are acting for the benefit of the employee, their actions clearly indicate they are not. To be perfectly clear—this practice of forced unionism is one to which I am very much opposed.

Forced Unionism and the Push for EFCA

A labor union's attempt at forced unionism is based on a business model. This model includes identification of a geographic area, identification of the potential business targets in that geographic area, and analysis of the total number of potential "members" which the union may acquire. It is simple statistical analysis. In many, if not most, cases there is no attempt by any employee of the companies targeted to reach out to the labor union for assistance.

Once the labor union has identified the scope of its target, its representatives then reach out to the companies to be impacted. The representative approaches a key executive of the employer in a relatively friendly matter, requesting a meeting. When they are granted this meeting, the labor union representative informs the company that it intends to unionize the workforce and that it wishes for the company to sign a "Neutrality Agreement" in which the company will agree to remain "neutral."[1] The union's definition of "neutrality" however, is surprisingly one-sided. Per the terms of the the agreement, the company is required to (1) produce the names of all of it's employees and their contract information, (2) agree not to say anything negative about the union or otherwise interfere with their attempts to organize the company's employees, and (3) agree to accept the union as the representative of the company if they produce authorization cards[2] for more than fifty percent (50%) of the class of employees. This automatic recognition would be in lieu of the holding of a secret ballot election by the National Labor Relations Board, the federal agency charged with the oversight of labor matters and the administration of such representation elections. The system proposed in the neutrality agreement is very much like the "card check" legislation that has been proposed under the misnomer of the "Employee Free Choice Act," which has been before Congress on multiple occasions over the past several years, and which its proponents have been unable to pass.

If the company refuses to sign the neutrality agreement, or if it otherwise takes action which the union finds, in its own definition, not to be "neutral," the union begins to target the company through a variety of means, including smear campaigns, deceptive representations, filing of frivolous charges with government agencies, the targeting of the company's employees and customers, and other actions ultimately designed to force the company to capitulate to the union's demands.

It does not make one bit of difference to the union who the company is, how well they treat their employees, how much better they pay their employees, or what benefits they provide. In short, the unions utilizing the forced unionization drives, ARE NOT, in any way, concerned with the best interests of the employees, and they are not motivated, by the "injustices" they allege to have been committed by the company.

The SEIU at My Doorstep

Prior to 2005, I would not have believed such a scenario to actually exist. In that year, however, the SEIU came to my doorstep. It began with calls in December of 2005, and finally an arranged meeting with SEIU contract administrator Dennis Dingow in April 2006. Mr. Dingow provided the altruistic sales pitch of the SEIU—that they were interested in improving working hours and working conditions for janitors around the country. I pressed Mr. Dingow for details on the proposal he was setting forth. He was not forthcoming, but rather surprisingly evasive. I also asked for information as to which of our accounts the request for the union's representation had come from. Mr. Dingow did not have an answer. To date, I have received no information which leads me to believe that any of our employees took

[1] The Neutrality Agreement presented to Executive Management Services by the SEIU Local 3 for signature is enclosed as Attachment 1. EMS has obtained copies of other Neutrality Agreements entered into by the SEIU, and all are in substantially the same format as Attachment 1.

[2] The Union Authorization Card utilized by the SEIU local 3 is enclosed as Attachment 2.

steps to affirmatively request the SEIU's assistance due to any work condition, wage or benefit, or other condition of employment.

I indicated to Mr. Dingow that he needed to provide me details of what the SEIU intended. He responded that they intended to organize all of the janitors in the Indianapolis area, and this included those employed by Executive Management Services, Inc. It was the desire of the SEIU that EMS be "neutral" in the process. I responded that I believed that EMS would be. Mr. Dingow indicated that by "neutral," he meant that they wanted EMS to sign a neutrality agreement.

As I researched the issue more carefully, spoke with advisors, and generally became more educated on the issue, it became clear to me that I simply could not agree to that which the SEIU was asking. First, I was not willing to give my employees confidential contact information to the SEIU. I was not sure if I could legally do so, and more importantly, I felt that the employees would be angered by the company divulging such information. I also feared that the union might abuse such information by contacting employees at inappropriate times, bothering those who may be uninterested through repeat contact, or placing undue pressure on the employee to commit to its cause.

Second, it seemed clear to me that if the employees wanted to have a union, they could choose to do so through a secret ballot election, in much the same manner as traditional elections are conducted. In this manner, their votes would remain private and, more importantly, there wouldn't be a concern as to whether the employees were being improperly persuaded or bothered. The system of "card check," on the other hand, seemed to me to be both public and fraught with danger. Would organizers share the identities of employees who had abstained with those who had signed the cards? How would I know if organizers were harassing my employees? Would organizers attempt to meet them at their homes? While the rhetoric of the union is that they don't commit any undue influence, only in an election atmosphere are there proper safeguards to ensure that such influence is not exerted. In short, in my attempt to do that which was in the best interest of the employee, I simply could not see how it would be to their benefit to risk subjecting them to undue pressure, and to unilaterally sacrifice their right to vote on whether to be represented by this labor union.

There were additional conversations and meetings with Mr. Dingow. Ultimately, however, he recognized that I was not going to sign the Neutrality Agreement. I stated such, but also told Mr. Dingow on several occasions I was amenable to the SEIU petitioning for an election and would live with the results. It was at this moment that the relationship truly turned adversarial for the first time. Mr. Dingow stated to me, "Mr. Bego, we enjoy conversation but embrace confrontation. If you do not execute this Neutrality Agreement, we will begin to target you, your employees and your customers." Needless to say, Mr. Dingow's threat did not work. EMS did not capitulate, and a four-year, million-dollar battle ensued between EMS and SEIU ensued.

On advice of our counsel, we instructed our managers to keep detailed records of the activities any organizing activity which occurred. We provided extensive training and instruction to our managers and supervisors on compliance with the National Labor Relations Act. Our various accounts were in close communication with our human resources department, and they, in turn, were in close communication with the executive staff and our legal advisors. What developed out of these efforts was a detailed record of the SEIU's corporate campaign against EMS. In addition to the noisy rallies and constant handbilling which typically occasion these campaigns, the actions of the SEIU included:

- From January 2007 to May 2008, the SEIU, not the employees of EMS, filed thirty-six unfair labor charges against EMS with the National Labor Relations Board. Approximately twenty-four of these were dismissed or voluntary withdrawn as having no merit. The remainder was resolved pursuant to a settlement agreement entered into between EMS and the SEIU (discussed further below).
- The SEIU assisted in the filing of three complaints with the Occupational Safety and Health Administration (or the state equivalent agencies). Two of these complaints alleged acts against EMS in facilities in which we were not present. The third made allegations that EMS required its employees to dispose of human body parts from biological labs. This, of course, made our customer very worried and generated a phone call from the appropriate governmental agency. However, we were able to quickly resolve and dismiss the concern.
- The SEIU paid religious leaders to support its cause, including distributing letters against EMS, holding rallies, and staging sit-ins and hunger strikes. At one point, this group of religious leaders requested that I meet with them. I did so, and found their motivations to be based on lack of knowledge and misinformation provided by the union. For example, this group believed that the wages and benefits

provided by EMS to its employees were inferior to those, which had been secured by the SEIU to other accounts in the geographic area and in similar areas. Union contracts that have been obtained by EMS have proven this not to be the case.

- Over a dozen members of the SEIU trespassed into one of the largest buildings in downtown Indianapolis, and one of the largest accounts of EMS, and caused to be released hundreds of purple balloons into the building's five-story atrium.[3]
- The SEIU staged a lemonade stand on a public street at which they provided free lemonade to passer-bys if these persons would call the CEO of a customer of EMS and request that they cease business with EMS and find a "responsible" contractor. The SEIU even supplied the cell phone from which these calls were made.
- The SEIU accessed the roof of the Western Southern Insurance corporate headquarters in Cincinnati, Ohio and hung a massive multi-story banner.[4]
- The SEIU filed frivolous charges with the NLRB, and then distributed fliers indicating that EMS was under investigation by the "federal government" for "unfair labor practices," including the harassment and intimidation of its employees.
- Distributed fliers making unsubstantiated allegations of civil rights violations.[5]
- The SEIU utilized religious organizations to interfere with the international business affairs of a customer of EMS, in an effort to pressure the customer cease business with EMS. This included paying for a disgruntled employee of EMS to be flown to London to embarrass the customer at an economic conference.
- On Halloween night in 2007, the SEIU had children trick or treat in my residential neighborhood. The children were instructed to hand out fliers at each house they went to for candy. These flyers claimed that buildings cleaned by EMS were "Houses of Horror" where employees were abused and mistreated every night.[6] Meanwhile, union organizers were in cars driving the streets of my neighborhood!
- Organizers continually harassed our employees trying to coerce them into signing union cards.
- The SEIU Infiltrated local governments to obtain favorable decisions for the SEIU, and used politicians in an attempt to have EMS contracts canceled in favor of responsible contractors, a euphemism for union contractors.

The details of the campaign are more fully set forth in my book, The Devil at My Doorstep.[7] The examples above are but a small sampling of the hundreds of tactics we were forced to endure. By these examples, however, it is my hope to demonstrate the manner in which the SEIU utilized government agencies and the media in general to accomplish their own objectives. This campaign against EMS was a prime example of their utilization of the strategy of a "death by a thousand cuts."

It is important to understand that, throughout this process, I consistently communicated to the SEIU that EMS was happy to participate in an election. In June 2007, I even took out an advertisement in the Indianapolis Star calling on the SEIU to either "Fish or Cut Bait."[8] I did not want to continue through this campaign, and hoped that through the court of public opinion I could place pressure on them to agree to an election, in which I was confident the employees would choose not to go with the SEIU as their bargaining representative. This did not work, as the SEIU simply did not have any interest whatsoever in an employee election.

On September 25, 2007, EMS was notified by a representative of the SEIU that seven of EMS's workers several of which we believed to be union salts were going on strike—a first in the nearly twenty year history of EMS. Eventually a total of ten workers (out of approximately 350 in the Indianapolis area) went on strike, representing approximately three percent (3%) of our Indianapolis workforce. The notice indicated that the strike was due to unfair labor practices. We knew based on the activities of the union to date, that this was not true.

The Involvement of the NLRB

In May 2008, following nearly two (2) years of picketing, harassment, wrongful accusations, and defamatory language, I agreed to enter into a settlement agreement with the SEIU with an intent and hope of ending the entire campaign. Both EMS and the SEIU had filed unfair labor practices charges with the NLRB against

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[3] Attachment 3 consists of a photograph taken during the event of the SEIU's balloon release in the atrium of a building in downtown Indianapolis.

[4] Attachment 4 is a photograph of the banner hung from the rooftop of the corporate headquarters of Western Southern Insurance. "Justice for Janitors" is a reference to a campaign in which the SEIU, including SEIU Local 3, was involved.

[5] A copy of one of the flyers alleging "civil rights abuses" is attached as Attachment 5.

[6] See Attachment 6.

[7] For more information on the book The Devil at My Doorstep, visit *http://www.thedevilatmydoorstep.com.*

[8] The newspaper advertisement inviting the SEIU to engage in a secret ballot election is included as Attachment 7.

the other. By entering this agreement, the SEIU was agreeing to no longer picket or threaten to picket EMS in Central Indiana. EMS was required only to abide by the provisions of the National Labor Relations Act, which I believe had been done any way. In my mind, there was little reason not to enter this agreement. By the Agreement, there was no finding that EMS had engaged in any wrongdoing, and no admission by EMS as to such. Had either of these elements been a requirement of settlement, I almost certainly would not have agreed to execute the document. Entering the Settlement Agreement was simply an attempt to put the events of the corporate campaign behind me.

Shortly after execution of the Settlement Agreement, however, I was notified by the union that eight (8) workers that had gone on strike were demanding reinstatement. Upon consultation with my attorneys, I refused. From the start, it was clear that the worker's strike was a recognitional strike with economic motivations. The signs that were carried in the course of the picketing, and the handbills which were distributed, consistently made reference to "worker wages," "health care," "worker benefits," and "working conditions," or they made generally reference to EMS not being a "responsible" company. It was rare when a handbill referenced an unfair labor practice. The strike simply did not have a "unfair labor practice" component to it.

Upon receiving notice of EMS' refusal to reinstate the employees, the union again filed multiple unfair labor practice charges against EMS. We were comfortable that the NLRB would rule in our favor on the issue. The settlement agreement itself identified that the SEIU had engaged in illegal recognitional picketing when it had not filed a petition with the board to be recognized as the bargaining representative of the employees, and had set forth the union's agreement not to engage in any further picketing of Executive Management Services in Central Indiana or engage in secondary boycotting against EMS where the purpose was to force EMS to recognize bargain with the SEIU.

To our shock, the NLRB, an agency whose mission statement clearly states it is bound to protect the secret ballot election and administer the NLRA act fairly without prejudice to employees, employers and unions, agreed with the SEIU and the General Counsel filed charges against EMS for refusing to reinstate the employees in retaliation for their support of the union. It was the position of the NLRB that EMS had engaged in unfair labor practices, and that this—at least in part—motivated the employees to engage in a strike, and that because the strike was an unfair labor practice strike, the employees had the right to reinstatement.

The position was absolutely preposterous. The SEIU had concocted an elaborate scheme involving the filing of a frivolous charges by organizers, not EMS employees, to convey the illusion of a multitude of "unfair labor practices" to support the notion that the strike was motivated by the unfair labor practices. Despite this, the NLRB, in the settlement agreement, had required the SEIU to no longer engage in illegal recognitional picketing and refrain from secondary boycotting. The NLRB was now reversing course and stating to EMS that it believed the picketing to have been motivated by unfair labor practices.

I can only believe that the position taken by the NLRB was either motivated by bias by the General Counsel's office in favor of the local union, or was the result of gross incompetence. In reviewing the numerous handbills and picket sign, there can be no doubt that the strike was an attempt for recognition by the union, and was economically motivated. The record from the hearing also shows that some of the striking employees produced affidavits indicating that no unfair labor practices had been committed. Nevertheless, the NLRB utilized their testimony in an effort to prove the unfair labor practices, despite their previous affidavits.

Further, it was absolutely clear in speaking with the employees, that the strike was completely motivated by economics. The employees appeared to have been coached in to discuss unfair labor practices in their testimony. They made reference to "UPLs" and "unfair practice labors," as if to indicate that they knew they were to say something to this effect, but not fully understanding what it meant. In the decision rendered by Administrative Law Judge Arthur Amchan, he wrote, "* * * at many points it is clear to me that the testimony of General Counsel's witnesses is contrived and very likely to be untruthful."[9] Executive Management Services, and Service Employees International Union, Local 3 and Service Employees Inter-

[9] The link for Judge Amchan's decision may be found at Attachment 8. 30459, 25-CA-30485, 25-CA-30486, 25-CA-30487, 25-CA-30489, 25-CA-30553, 25-CA-30537, 25-CA-30690, 25-CA-30692, 25-CA-30693, 25-CA-30694, 25-CA-30695, 25-CA-30697, 25-CA-30698 (2009) at page 5. Further, Amchan wrote, "[the] record indicates at least several instance of outright fabrication." Id.

national Union, Local 1, Cases 25-CA-30221, 25-CA-30223, 25-CA-30226, 25-CA-30266, 25-CA-30328, 25-CA-30392, 25-CA-

When Judge Amchan rendered his decision in favor of EMS, it was my belief that the ordeal was finally finished. Once again, I was to be surprised. Despite the overwhelming evidence to the contrary, and the convoluted and clearly false testimony of the NLRB's witnesses, the General Counsel of the NLRB appealed Judge Amchan's decision to the five-member NLRB in Washington. In June, 2010, Chairperson Liebman, along with members Schumber and Pierce, issued a decision in favor of EMS finding that the strike was not, in any way, motivated by unfair labor practices, and was instead only a strike motivated by a desire to force the company to recognize the SEIU as the bargaining representative of the employees.[10]

Current Actions of the NLRB

As an individual who has witnessed first-hand the unsavory tactics employed by some labor unions in their corporate campaigns to force unionization on companies and their employees, I am troubled by the direction of the current labor board, their current path of implementing the agenda of big labor, and their unapologetic actions in contravention of the will of Congress. Over the past five to six years, Congress has failed to generate the support necessary to pass the disastrous Employee Free Choice Act ("EFCA"). The goal of EFCA was to provide labor unions the tools to bypass the secret ballot process to increase its struggling membership. The current labor board is accomplishing this goal through its rulemaking, overruling of case law precedent, and though the General Counsel's issuance of enforcement directives to the NLRB field offices. Much of the action that has been taken is designed to provide labor unions with greater ability to pressure employers and their employees to execute neutrality agreements and check cards without consequence. The NLRB has recently issued rulings expanding their rights without running afoul of rules on bannering, secondary boycotting, and even the making of verbal threats. These actions are all designed to increase the labor union's ability to utilize the card check process, rather than the traditional secret ballot.

The question of why Congress left an exception to the secret ballot election open in the NLRA when it passed the Taft-Hartley amendment in 1947 should be considered. Was it to provide labor unions with an opportunity to run smear campaigns against employers in the form of corporate campaigns? Or was it, as the language suggests, simply an avenue left available to unions and employers that decided to work conjunctively for the employees? If it was the later, have we been faced with years of erroneous case law which has led us to where we are today?

Of further concern are the various memorandums issued by the interim General Counsel, wherein he has sought to broaden the fines and penalties that are assessed in situations involving violations of the National Labor Relations Act. While these policies appear neutral on their face, they are in fact a sword to be used by big labor in its corporate campaign arsenal when organizing employers. As was seen in the case of EMS, the labor union never hesitated to use the process of filing unfair labor practice charges in an effort to exert pressure to make EMS capitulate with its demands. Despite the fact that the union was unsuccessful on all of its charges, there was no mechanism to deter such behavior. To date, there exist no penalties against either unions or employers for filing frivolous claims with the NLRB or any other administrative agency. Until such laws are enacted, it should be expected that the labor unions will continue to use all weapons in its arsenal, as it is in their business model to do so.

Finally, I fine it unfortunate that Congress has continued to allow the National Labor Relations Act to function as a biased and politically motivated piece of legislation. The Act is a creature of the legislature. Rather than drafting the legislation in such a manner as to control the process, thereby removing politics from the equation, Congress has left the NLRB with a tremendous amount of authority to dictate the outcome of labor matters. It should, therefore, be expected that without implementation of the proper safeguards and controls, this trend shall continue. So long as politicians receive benefits from their friends in big labor, the NLRB can never be independent and free from political influence, and its integrity shall always be compromised.

Thank you again for the opportunity to present this information to you today. I am happy to provide the Subcommittee with additional information that it may deem to necessary or helpful, and to answer any questions from the members.

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[10] The link to the NLRB's decision is found in Attachment 9.

ATTACHMENT 1

NEUTRALITY AGREEMENT
BETWEEN
AND SERVICE EMPLOYEES INTERNATIONAL UNION

Service Employees International Union, Local 3 ("Union"), and ("Employer") hereby enter into this neutrality agreement ("Agreement") to establish a recognition procedure for all of Employer's non-supervisory janitorial service employees employed in commercial office buildings and office parks of over 75,000 square feet in Marion County and Hamilton County, Indiana. For the purposes of this agreement, an office park includes any set of contiguous buildings owned or managed by the same person or entity regardless of whether the buildings are covered by a single cleaning contract or cleaned by a single contractor.

For purposes of this Agreement, "commercial office building" shall include any commercial or government building in which 60% or more of the overall building floor space (excluding parking area) is devoted to office space. The parties acknowledge that "office space" includes common areas such as lobbies, restrooms and hallways adjacent to offices. "Commercial office building" shall not include health care, warehouse, light industrial, laboratory, production, or manufacturing facilities.

For purposes of this Agreement, "non-supervisory janitorial service employees" (hereinafter "Employees") shall not include any supervisor employed by Employer.

Employer (and its supervisors) will not take any action or make any statement that will directly or indirectly state any opposition by Employer to the selection by its Employees of a collective bargaining agent, or preference or opposition to Union as a bargaining agent, as described in Exhibit A. Union access to Employer's Employees shall be limited to the access provided in Exhibit A and shall not include the interior of any building serviced by Employer.

Employer and Union agree and acknowledge that the National Labor Relations Act protects the rights of Employees to join labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. The Parties further agree and acknowledge that the National Labor Relations Act prohibits any form of discrimination, discipline or coercion for engaging in union activities or for choosing not to engage in union activities.

Immediately following the execution of this Agreement, Employer shall sign and make available to all of its supervisory and non-supervisory employees employed within the scope of this agreement and Union executed copies of the letter attached hereto as Exhibit A on company letterhead, assuring Employees of Employer's neutrality in the matter of their union organizing.

Immediately following the execution of this Agreement, Union shall sign and deliver to the addressees designated by Employer the letter attached hereto as Exhibit B on Union letterhead, assuring the addressees that Union deems Employer to be a responsible contractor.

Upon Union's request, Employer shall provide within five (5) business days a list of the names and addresses of all Employees within classifications subject to this Agreement. Such request must be limited to Employees assigned to work locations within the geographic scope of this Agreement. Employer shall update the list upon reasonable request from Union, but no sooner than ten (10) business days following provision of the previous list.

Once Union claims majority status at a commercial office building, or group of commercial office buildings, in Marion County and Hamilton County, it shall provide written notice of such claim to Employer at the address designated below for purposes of notice. Employer and Union will meet within ten (10) days of Employer's receipt of such written notice at a mutually agreeable date, time and location. Union will then present Employer with signed authorization cards or a petition memorializing individual Employees' desire to be represented by Union for purposes of collective bargaining. Employer shall not unreasonably object to the validity of any authorization card. The card check shall be administered by a neutral third party, to be selected by mutual agreement of the parties and who shall preside over the card check meeting, as expressed in Exhibit C. Both the Union and Employer may designate one representative to be present during the card check process.

Employer will not file a petition with the National Labor Relations Board for an election in connection with any demand for recognition by Union during the term of this Agreement. By entering into this Agreement, Employer acknowledges that it has waived any right that it may have during the term of this Agreement to file a representation petition in response to any demand for recognition by Union pursuant to this Agreement.

Once Union can demonstrate that at least 60% of the combined square footage of commercial office buildings and office parks (as defined above) over 75,000 square feet in Marion County and Hamilton County is serviced by contractors who have recognized Union as the exclusive bargaining agent of their employees, Employer agrees to commence bargaining for a master collective bargaining agreement for Marion County and Hamilton County. Employer will be under no obligation whatsoever to bargain with Union prior to Union's demonstration of this 60% threshold and Union expressly waives Employer's duty to bargain prior to the Union's demonstration of this 60% threshold. Prior to claiming that the 60% threshold has been met, Union shall deliver to Employer a list of the buildings (including addresses) it deems to be included within the scope of this Agreement (i.e., commercial office buildings and office parks of over 75,000 square feet in Marion County and Hamilton County). Prior to Union's demonstration that the 60% threshold has been met, Employer and Union shall attempt to mutually agree to the list of buildings included within the scope of this Agreement. If no agreement can be reached, the parties will submit the issue to arbitration pursuant to this Agreement.

On the date of execution of this Agreement, and continuing for the duration of this Agreement, Union shall list Employer on any list of approved contractors (including any list of "responsible contractors" or similar lists) distributed to building owners, building managers, building tenants, any media sources, or any other organization or individuals. Contractors shall be listed in the order of their share of the market defined in this Agreement.

For the duration of this Agreement, Union shall not engage in any form of demonstration targeting Employer at any of Employer's work locations in the geographic scope of this agreement. To the extent Union intends to demonstrate at a location serviced by Employer targeting an entity other than Employer, Union shall provide notice to Employer at least seven (7) calendars days prior to such demonstration. For purposes of this Agreement, "demonstration" shall include any form of handbilling, picketing, patrolling, public or private speech, or any other activity identifying, either directly or indirectly, Employer. "Demonstration" shall also include maintenance of any Internet website targeting Employer, its customers, or tenants of buildings serviced by Employer. This prohibition on demonstrations shall not apply to any demonstration targeting Employer's customers or tenants occurring outside of the geographic scope of this Agreement and will be considered ineffective on a date 60 calendar days after the first bargaining session between Union and Employer resulting from the bargaining trigger described above.

The parties agree that any disputes regarding the interpretation or application of this Agreement shall be submitted to expedited arbitration before an impartial arbitrator. Should Employer and Union be unable to agree upon an impartial arbitrator, an arbitrator shall be selected pursuant to the American Arbitration Association's rules for expedited arbitration upon the written request of Employer or Union. A finding or award by the arbitrator shall be final and binding upon the parties. All fees and costs associated with the arbitration shall be shared equally by the parties, however each party shall bear its own attorneys' fees. This Agreement shall be interpreted as an agreement under Section 301 of the National Labor Relations Act.

Any notice required under this Agreement shall be sent to the following designated addresses of the parties:

Service Employees International
Union, Local 3
1 N. Meridian, Suite 1010
Indianapolis, IN 46204

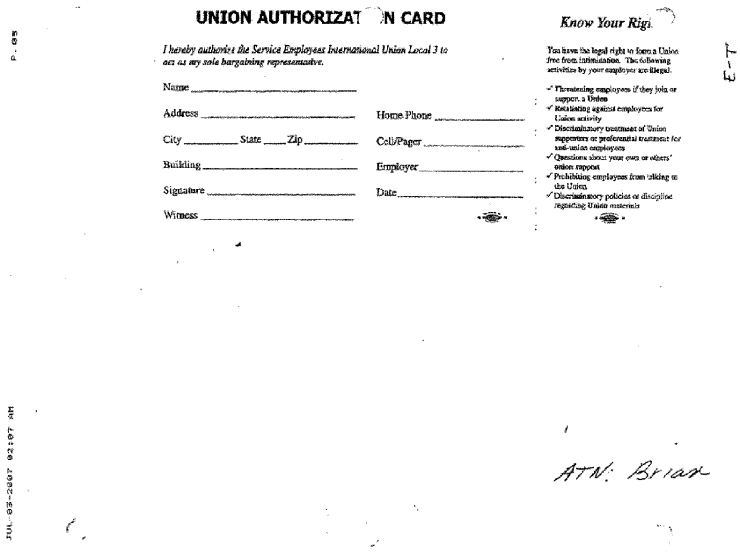
This Agreement shall be effective on the date of complete execution and shall continue in effect for a period of three years, or until collective bargaining negotiations commence between Union and Employer, whichever occurs earlier.

This Agreement shall be binding, within the geographic scope of this Agreement, upon the parties, their successors and assigns, and any entity in which Employer or its parent has a controlling interest.

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 3

Dennis M Dungan Dated: 11-18-05

ATTACHMENT 2



UNION AUTHORIZAT N CARD

I hereby authorize the Service Employees International Union Local 3 to act as my sole bargaining representative.

Name _____

Address _____ Home Phone _____

City _____ State ____ Zip _____ Cell/Pager _____

Building _____ Employer _____

Signature _____ Date _____

Witness _____

Know Your Rig

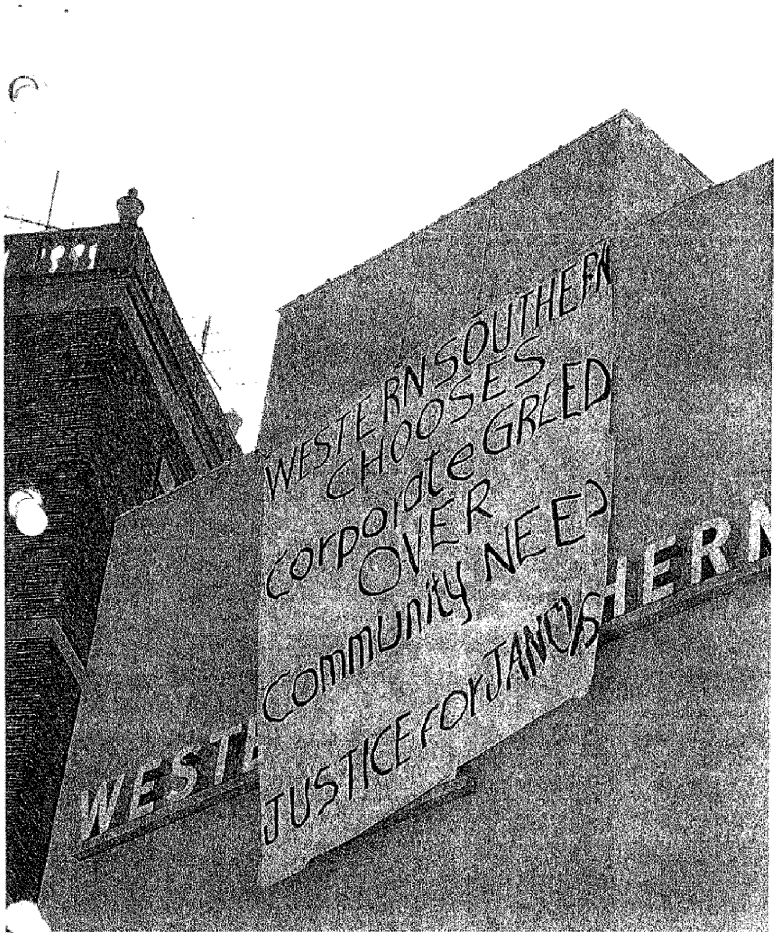
You have the legal right to form a Union free from intimidation. The following activities by your employer are illegal.

- ✓ Threatening employees if they join or support a Union
- ✓ Retaliating against employees for Union activity
- ✓ Discriminatory treatment of Union supporters or preferential treatment for anti-union employees
- ✓ Questions about your own or others' union support
- ✓ Prohibiting employees from talking to the Union
- ✓ Discriminatory policies or discipline regarding Union materials

ATN: Brian

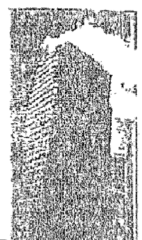
ATTACHMENT 3

ATTACHMENT 4



ATTACHMENT 5

WHAT HAPPENS AT MARKET TOWER AFTER TENANTS LEAVE FOR THE DAY?



INTIMIDATION

FIRING OF UNION SUPPORTERS

WORKER EXPLOITATION

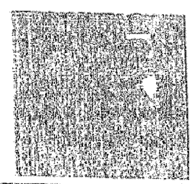
CIVIL RIGHTS ABUSES

THREATENED PHYSICAL VIOLENCE

CONTRACTORS AT MARKET TOWER ARE OUT OF CONTROL

The contractor hired to clean this building, Indianapolis-based Executive Management Services, has initiated an unprecedented attack against working families in the Midwest who are standing up for the American Dream.

Now, Market Tower security guards are routinely threatening and intimidating janitors by calling the police to prevent janitors from holding union meetings after work, engaging in surveillance against workers engaged in protected activity and threatening physical violence against union organizers.

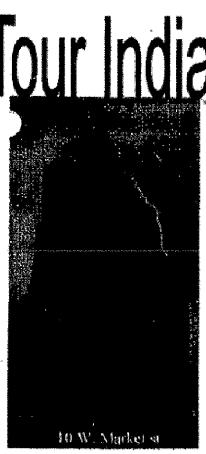


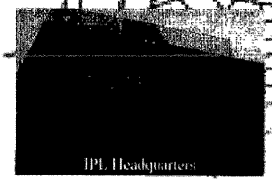
Indianapolis janitors are fighting for a better future for their families.

END THE CIVIL RIGHTS ABUSES AND SUPPORT WORKING FAMILIES

ATTACHMENT 6

Tour Indianapolis Houses of Hor





Roche

Unsuspecting citizens enter these building at day, unaware that at night their building become a house of horrors for the EMS janitors who clean their offices.

EMS Janitor **who works with blood & dangerous chemicals at the ROCHE Labs report never having mandatory HPV vaccines, protective clothing and only had a training on safety After he complained to OSHA.**

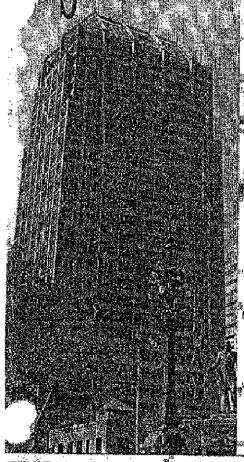
EMS Labor Law Violations include: Threatening, Retaliating, and Firing Workers for standing up for their rights.

"When you earn $312 every two weeks, its not enough but you still rely on your salary to provide for your family. Then company threatens you for speaking out and fires your co-workers for speaking out.-Shaneka Brown EMS Janitor

Every night is SCARY For an EMS Janitor.

Dispute with EMS and no other employer. Janitors are on strike for unfair labpr practices

Why is HUG Mansurs' Market Tower A Houses of Horrors For EMS Janitors?



Janitors who clean Market Tower and other prominent Indy Buildings for EMS face unsafe working conditions, broken cleaning equipment, and Management acts of intimidation and retaliation for standing up for their rights.

EMS Labor Law Violations include: Threatening, Retaliating, and Firing Workers for standing up for their rights.

"When you earn $312 every two weeks, its not enough but you still rely on your salary to provide for your family. Then the company threatens you for speaking out and fires your co-workers for speaking out.-Shaneka Brown EMS Janitor

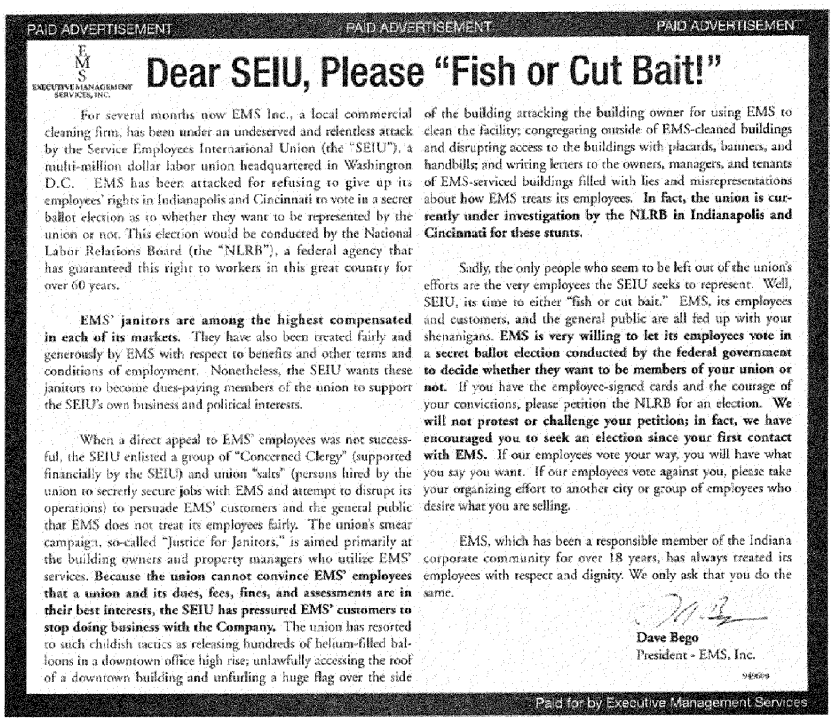
An EMS Janitor who works with blood & dangerous chemicals at the ROCHE Labs report never having mandatory HPB vaccines, protective clothing and only had a training on safety After he complained to OSHA.

Every night is SCARY for an EMS Janitor.

Dispute with EMS and no other employer. Janitors are on strike for unfair labor practices

E-777

ATTACHMENT 7



PAID ADVERTISEMENT PAID ADVERTISEMENT PAID ADVERTISEMENT

EMS EXECUTIVE MANAGEMENT SERVICES, INC.

Dear SEIU, Please "Fish or Cut Bait!"

For several months now EMS Inc., a local commercial cleaning firm, has been under an undeserved and relentless attack by the Service Employees International Union (the "SEIU"), a multi-million dollar labor union headquartered in Washington D.C. EMS has been attacked for refusing to give up its employees' rights in Indianapolis and Cincinnati to vote in a secret ballot election as to whether they want to be represented by the union or not. This election would be conducted by the National Labor Relations Board (the "NLRB"), a federal agency that has guaranteed this right to workers in this great country for over 60 years.

EMS' janitors are among the highest compensated in each of its markets. They have also been treated fairly and generously by EMS with respect to benefits and other terms and conditions of employment. Nonetheless, the SEIU wants these janitors to become dues-paying members of the union to support the SEIU's own business and political interests.

When a direct appeal to EMS' employees was not successful, the SEIU enlisted a group of "Concerned Clergy" (supported financially by the SEIU) and union "salts" (persons hired by the union to secretly secure jobs with EMS and attempt to disrupt its operations) to persuade EMS' customers and the general public that EMS does not treat its employees fairly. The union's smear campaign, so-called "Justice for Janitors," is aimed primarily at the building owners and property managers who utilize EMS' services. **Because the union cannot convince EMS' employees that a union and its dues, fees, fines, and assessments are in their best interests, the SEIU has pressured EMS' customers to stop doing business with the Company.** The union has resorted to such childish tactics as releasing hundreds of helium-filled balloons in a downtown office high rise; unlawfully accessing the roof of a downtown building and unfurling a huge flag over the side of the building attacking the building owner for using EMS to clean the facility; congregating outside of EMS-cleaned buildings and disrupting access to the buildings with placards, banners, and handbills; and writing letters to the owners, managers, and tenants of EMS-serviced buildings filled with lies and misrepresentations about how EMS treats its employees. **In fact, the union is currently under investigation by the NLRB in Indianapolis and Cincinnati for these stunts.**

Sadly, the only people who seem to be left out of the union's efforts are the very employees the SEIU seeks to represent. Well, SEIU, its time to either "fish or cut bait." EMS, its employees and customers, and the general public are all fed up with your shenanigans. **EMS is very willing to let its employees vote in a secret ballot election conducted by the federal government to decide whether they want to be members of your union or not.** If you have the employee-signed cards and the courage of your convictions, please petition the NLRB for an election. **We will not protest or challenge your petition; in fact, we have encouraged you to seek an election since your first contact with EMS.** If our employees vote your way, you will have what you say you want. If our employees vote against you, please take your organizing effort to another city or group of employees who desire what you are selling.

EMS, which has been a responsible member of the Indiana corporate community for over 18 years, has always treated its employees with respect and dignity. We only ask that you do the same.

Dave Bego
President - EMS, Inc.

Paid for by Executive Management Services

ATTACHMENT 8

)ecision by Administrative Law Judge Arthur Amchan:

ttp://www.nlrb.gov/search/nlrbdocsearch/*?advance_search=1&query_hidden=&query=
:casenumber=25-CA-
0221&datefiledstart=&datefiledend=&citation=&proxsearchterm1=&proxwithin1=&pr
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1en choose "Administrative Law Judge's Decision"

ATTACHMENT 9

)ecision by the National Labor Relations Board:

ttp://www.nlrb.gov/search/nlrbdocsearch/*?advance_search=1&query_hidden=&query=
:casenumber=25-CA-
0221&datefiledstart=&datefiledend=&citation=&proxsearchterm1=&proxwithin1=&pr
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Chairman ROE. Mr. Karnas?

STATEMENT OF F. CHET KARNAS, PRESIDENT, LONE SUN BUILDERS, INC.

Mr. KARNAS. Chairman Roe, Ranking Member Andrews, and members of the Subcommittee on Health, Employment, Labor, and Pensions, good morning. And thank you for the opportunity to testify before you today.

In the interest of time, I request that my full testimony be included in the hearing record, please.

My name is Chet Karnas. I am the president of Lone Sun Builders, a small framing and drywall subcontractor in Albuquerque, New Mexico. Lone Sun and its 55 employees are dedicated to providing quality work through ethical business practices, and we are very involved in our community.

I also appear before you today on behalf of Associated Builders and Contractors. ABC represents more than 23,000 merit shop construction contractors, employing nearly 2 million workers. ABC's membership is bound by a shared commitment of merit shop philosophy based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through competitive bidding.

I also am a Board of Directors position at AGC of America, as well.

Lone Sun Builders started as a small company. As we grew, we cultivated a family atmosphere in which workers were taken care of and fairly treated. Today, Lone Sun is one of the most well-respected contractors in the State.

Despite our reputation, or perhaps because of it, we have been targeted over the years by unions, particularly the carpenters' union. We have experienced corporate campaigns firsthand, during which unions engage in unethical coercion and intimidation in an attempt to smear responsible employers' good names.

In the construction industry, unions do this to pressure merit shop contractors to sign neutrality agreements or become union signatories. If these objectives fail—and they often do—they use these tactics to try to put contractors out of business.

Lone Sun has battled the aggressive corporate campaign tactics, including bannering, for several years now. But prior to that, our company enjoyed a professional and respectful relationship with the unions for more than 20 years. We all lived and worked in the same community, so the relationship was courteous and professional. We were all stakeholders in our community.

Eventually, the carpenters' union decided to bring in organizers from other parts of the country, and the situation started to change. The carpenters' organizers sent letters to our clients, as well as developers and general contractors, which stated the union had a labor dispute with us, and they wrongly and falsely claimed that we did not provide benefits to our employees, which we do. We refuted the claims and publicized our excellent benefits program. Rather than engage in an open and constructive dialogue, the union told us to expect continued harassment.

In 2008, the aggressive bannering campaign started, where "Shame On" banners appeared on approximately one dozen of our construction sites. The carpenters displayed these large signs in front of our clients' buildings, emblazoned with inflammatory, unfounded claims about labor policies. And, on some projects, the client's name on the banners had not even hired us; they were tenants having work performed by general contractors or building owners and had no relationship with the contractors.

The following year, the union escalated its campaign, to include mass pickets at several large projects. These pickets included vul-

gar chants, physical threats, name-calling, false accusations, trespass, blocking of egress and ingress. During the campaign, the carpenters showed up at a local church, where they disturbed services after repeated pleas to stop. They were eventually dispersed by the police at that event.

Realizing that we needed to fight back to survive the union's undue treatment, we embarked on a campaign of our own to protect our integrity and our reputation. We do have something to protect, and that is our reputation.

We generated media interest and launched a blog chronicling Lone Sun's experience with the carpenters' corporate campaign. We also learned, doing that blog, that the union was hiring outside laborers to engage in this behavior, paying them low wages and no benefits. It is ironic that a company like ours that pays excellent wages and has benefits would be picketed by people that don't have benefits and paid low wages.

I firmly believe that our actions had a positive impact on the court of public opinion and it helped us avert complete disaster. But despite our efforts, business has still suffered, many clients were impacted, and many general contractors were reluctant to utilize our services, fearing the organizers' aggressive and vulgar presence. We estimate that we have suffered about a 20 to 30 percent decline in sales directly due to the negative impact of the carpenters' corporate campaign.

As a responsible, ethical contractor with a workforce full of happy and well-compensated employees, I have to wonder, why us? Experience has taught me that I may never get the direct answer. All I know is that, as long as we remain defiant, the union seems ready to do anything it can to destroy our company's reputation.

On behalf of Lone Sun Builders and ABC, I would like to again thank the committee for holding today's hearing. And I am pleased to see a renewed interest on Capitol Hill in the problems that corporate campaigns can cause for honest, hardworking merit shop contractors. I look forward to working with you on this issue.

This concludes my formal remarks. Thank you.

[The statement of Mr. Karnas follows:]

Prepared Statement of F. Chet Karnas, President and Owner, Lone Sun Builders, Inc., on Behalf of Associated Builders and Contractors

CHAIRMAN ROE, RANKING MEMBER ANDREWS AND MEMBERS OF THE SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR, AND PENSIONS: Good morning and thank you for the opportunity to testify before you today on "Corporate Campaigns, the NLRB and the Impact of Union Pressure on Job Creation."

My name is Chet Karnas. I am the president and owner of Lone Sun Builders, Inc., a small framing and drywall subcontractor based in Albuquerque, New Mexico. Lone Sun provides hands-on project management, qualified supervision, timely and cost-efficient scheduling, and a certified safety program. Our mission is, and always has been, to provide quality with integrity through ethical business practices. Lone Sun's reputation is reinforced by our loyalty to and respect for our clients, vendors and, most importantly, our 55 employees.

I also appear before you today on behalf of Associated Builders and Contractors (ABC). ABC is a national trade association representing more than 23,000 merit shop contractors that employ nearly two million workers whose training and experience span all of the 20plus skilled trades that comprise the construction industry. ABC's membership is bound by a shared commitment to the merit shop philosophy. This philosophy is based on the principles of nondiscrimination due to labor affiliation and the awarding of construction contracts through competitive bidding based on safety, quality and value.

Lone Sun Builders' Battle with Corporate Campaigns and Bannering

Lone Sun Builders has simple roots, starting as a "two guys and a pick-up truck" operation. As we have grown to add more employees, we have chosen to operate our business like an extended family in which workers are taken care of and treated fairly. Today, Lone Sun has grown to be one of the most highly regarded subcontractors in the state, and a proud merit shop contractor.

However, because Lone Sun sets the bar high among subcontractors, we have been repeatedly targeted by unions attempting to organize our employees. Unions have launched several "corporate campaigns" against us over the years, during which they have engaged in many unethical practices, including attempts to smear our name through "bannering." In Lone Sun's experience, bannering has consisted of the union displaying large signs in front of our clients' (and other neutral third parties') places of business. These signs were emblazoned with inflammatory, unfounded claims about our labor policies, and designed to publicly humiliate and discredit us. These deplorable tactics are desperate attempts to unfairly gain market share by targeting merit shop construction companies and their clients—regardless of the wishes of their employees. In the construction industry, unions use bannering to threaten or coerce merit shop contractors' clients into hiring union-affiliated firms, or to force merit shop contractors to sign neutrality agreements or become union signatories. If these objectives fail—and they often do—they use bannering to try to put merit shop competition out of business for good.

More Amicable Times

Lone Sun's experience with aggressive union bannering began almost four years ago, but it is important to note that we have had interactions with various divisions of the United Brotherhood of Carpenters for more than two decades. Initially, the relationship was professional and respectful, and involved the New Mexico District Council of Carpenters. From time to time, a local organizer would come out to Lone Sun jobsites to look around and ask employees why they were working for a merit shop company. After these visits, we would sometimes have discussions over coffee, where I would provide him with information about Lone Sun's wage structure and benefits program, as well as the community service we performed. In retrospect, I believe the non-threatening nature of our initial relationship with the carpenters was largely due to the fact that we lived and worked in the same community. We felt a connection through our mutual goal of positive future development in the area.

After a few years, however, the situation started to change. My local union contact informed me that the District Council had decided to bring in organizers from other parts of the country—specifically Chicago and El Paso, Texas. I firmly believe the union felt it could more effectively execute aggressive organizing efforts and corporate campaigns if it utilized organizers that had not lived and worked in our community.

Shift to Aggressive Tactics

Around 2004, when the District Council was folded into the Mountain West Regional Council of Carpenters, they began sending letters to Lone Sun's current and prospective clients stating the union had a "labor dispute" with us, wrongly claiming we "did not provide benefits" to our employees when we actually did (and still do). In fact, Lone Sun offers an excellent benefits program that includes health and life insurance, a public works pension plan and even a 401(k)—a rarity for our industry's tradesmen and laborers.[1] As a continued commitment to our employees, we have steadily increased the amount we pay toward their health care premiums—currently 85 percent—and we cover 100 percent of the premiums for our employees' life insurance. In addition, we offer trade-specific certifications, first aid training, Occupational Safety and Health Administration (OSHA) training and an apprenticeship program.

We responded to each of the union's letters with one of our own, countering the claims and providing an overview of Lone Sun's benefits program. In a preemptive move, we also provided letters and documentation to the New Mexico Department of Workforce Solutions, the governor of New Mexico, the lieutenant governor, state legislators, the president of the University of New Mexico, as well as developers, general contractors, owners, and trade and professional associations.

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[1] Incidentally, Lone Sun's peers in the industry that are union signatories have stated that their benefits programs have become less solvent, with retirees being paid less as employer contributions are rising. In the area controlled today by the Southwest Regional Council of Carpenters, these contributions are scheduled to rise another .50 cents per hour by the end of 2011.

At the same time, the new union organizers began to show up at jobsites claiming to be holding "raffles" in which employees were to submit their names, addresses and telephone numbers in order to win. Although none of the employees who signed up for the raffles ever won anything, most said they were contacted by the union. Some employees were even personally visited at their homes.

In May 2006, the union organizers contacted us and we agreed to a meeting at our office.

During the meeting, I mentioned their letter campaign and the raffles, and I once again reminded them about our benefits program, as well as our respect for union tradesmen and contractors. I discussed my friendships with other principal owners of union signatory contractors, and our commitment to the industry as a whole and our community at large. I told them I believed we should concentrate our efforts into making things better for everyone. At the end of the meeting, they remarked that they did not care for Lone Sun Builders, and would continue to harass me and my employees.

The following year, the carpenters again reorganized into another larger regional council—this time referred to as the Southwest Regional Council of Carpenters. This group consolidated what originally was a small group of locals, with approximately 2,500 members, into a massive council in excess of 32,000 members. This allowed the carpenters to export their corporate campaign and bannering tactics from California, through Arizona and into New Mexico. Throughout the next two years, the carpenters sent letters to owners, contractors and developers stating they were engaged in a "labor dispute" with Lone Sun, and that they would be pursuing an "aggressive public information campaign" against us that would "unfortunately impact all parties associated with projects where they are employed."

In 2008, the aggressive bannering started in earnest. The carpenters recruited day laborers to hold large signs, stating, "SHAME ON" the third party owners of businesses where Lone Sun performed work. On some projects, the entities named on the banners had not even hired us, or even the general contractor. In many cases, the owner or developer hired the contractors, and the end user—the tenant—was named on the banner. In all, Lone Sun was targeted with banners on approximately a dozen projects in 2008.

In June 2009, the union organized a mass picket at a high-visibility project in Santa Fe, New Mexico. The mass picket included vulgar chants, physical threats, name calling and false statements, including that Lone Sun paid employees in cash and did not provide health benefits. After the mass picket in Santa Fe, the carpenters duplicated the process at multiple sites, including a furniture outlet, a church and the University of New Mexico's Tamarind Institute. At this point, we knew we could not sit idly by and allow the unions to pressure us and our clients any longer.

Fighting Back Legally and Ethically

Over the years our preferred response to the carpenters' actions had been direct dialogue with their representatives—always accompanied by explicit statements that the conversations were not to be construed as bargaining discussions. However, once the union became extremely aggressive, this method of communication failed. We attempted to contact the Southwest Regional Council's headquarters in Los Angeles multiple times, but they never responded. When members of the public and state legislators were similarly unsuccessful, we learned that it had become the union's procedure to not respond to inquiries into the motivations behind their actions. From time to time, they would promise to make a statement, but never did.

In 2009, we embarked on a campaign to protect our company's integrity, and to educate as many professional organizations as possible in and around Albuquerque about the true motivation behind the carpenters' actions. We gave presentations to many local trade associations, employer groups, schools and press outlets, resulting in task forces, awareness materials and positive media coverage.

We visited many of the carpenters' bannering sites around the area—regardless of whether Lone Sun was the target—and learned that the day laborers were not even union members. Instead, the carpenters used day laborers and paid them low wages, with no deductions or benefits. We, of course, found it ironic that these individuals had chosen to discredit a company with loyal employees who enjoy excellent pay and benefits.

In 2009, we launched our blog, which chronicles Lone Sun's experience with the carpenters' corporate campaign. We also created our own banners, which read, "LONE SUN BUILDERS—EMPLOYEE BENEFITS AND GREAT WAGES," and "SHAME ON THE CARPENTERS UNION—HONESTY AND INTEGRITY ARE THE AMERICAN WAY—STOP THE LIES!" We produced a brochure that provided photos of the union's banners at local hospitals and pharmacies, churches and

schools, appealing to government officials and the business community to take action. We held a "silent" demonstration and community breakfast for friends and colleagues (and even welcomed the union picketers) at a local church where the carpenters had disrupted a service.

I firmly believe our actions positively impacted public opinion in New Mexico and helped Lone Sun Builders avoid complete financial and professional ruin.

Aftermath

Despite the outpouring of support we received from our community, and the successes of our own public education campaign, business has suffered greatly. Many of the clients and building tenants that were publically named on the union's banners also were impacted by the negative publicity. In addition, just as the carpenters intended, our general contractors became reluctant to utilize our services for fear of the negative publicity and the organizers' aggressive and vulgar presence. In all, we estimate that we have suffered a 20 percent to 30 percent decline in sales directly due to the negative impact of the carpenters' corporate campaign. To date, prospective clients express concerns about working with us—and in many instances they have opted to go elsewhere for services.

Even though business has been negatively impacted, we continue to promote our company and its skilled workforce, display our banners touting our benefits program, and contribute charitably to our surrounding community. In addition, Lone Sun's experience with union corporate campaigns is extensive and we have become knowledgeable in their tactics—and how to lawfully combat them.

The last few years have taught Lone Sun that as long as we remain defiant and our employees express their unwillingness to organize, the union will continue to do anything it can to destroy our company and its reputation. The carpenters union has violated our property rights, issued false claims, made vulgar and threatening remarks, and vowed to put us out of business. To my disappointment, the National Labor Relations Board (NLRB) has recently signaled it will give them cover every step of the way.

The NLRB's Support of Corporate Campaigns and the Impact on Job Creation

The NLRB's recent actions clearly demonstrate the agency has abandoned its role as a neutral enforcer and arbiter of labor law in order to promote the special interests of politically powerful unions. These actions have negative implications for workers, consumers, businesses and the economy, and will inevitably invite greater union intimidation of employees, consumers and small businesses; trample private property rights; reduce employee access to secret ballots; and greatly limit the ability of U.S. businesses to quickly and flexibly adjust to the demands of global competition and a changing economy.

The Board's September 2010 bannering decisions have been most disappointing for Lone Sun. In these cases, the Board took steps to protect this coercive practice, failing to apply longstanding laws against secondary union activity intended to prohibit confrontational conduct aimed at neutral parties, such as our clients.[2] For decades, the ranks of construction unions have been dwindling, which is reflected in the fact that today, only 13 percent of construction workers belong to a union.[3] This statistic, which illustrates a clear industry-wide choice not to organize, and leads unions to employ bannering and other desperate, unethical tactics. The NLRB's decision will no doubt embolden and encourage more unions to incorporate this practice into their already aggressive and irresponsible corporate campaign efforts.

The Board also has made it easier for construction unions to engage in so-called "salting" abuse, in which they apply for work with merit shop contractors without being genuinely interested in performing that work, solely to provoke unfair labor practice charges and disrupt merit shop workforces.[4] Endorsing the hiring of individuals whose motivation for seeking employment is the disruption of the workplace runs directly contrary to the Obama administration's efforts to grow our economy and improve working conditions for the American people.

I understand the Board also is looking at whether employers can be forced to allow non-employee union agents to trespass on their premises for the purpose of harming their businesses if the employer has allowed access to other non-employee

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[2] In consolidated cases known as United Brotherhood of Carpenters Local No. 1506 [355 NLRB No. 159 (2010)], the Board determined in a 3-2 split decision that bannering is protected speech under federal labor law. In his dissent, Board Member Brian Hayes argued that bannering was nothing more than "stationary picketing," and should be considered "secondary coercion," as originally intended by Congress in Section 8(b)(4)(ii) of the National Labor Relations Act.

[3] U.S. Department of Labor, Bureau of Labor Statistics, Economic News Release: Union Members Summary, Jan. 21, 2011; available at: *http://www.bls.gov/news.release/union2.nr0.htm.*

[4] See KenMor Electric Co.; 355 NLRB No. 173 (2010).

individuals or groups that have no intention of harming the business (such as the United Way or the Girl Scouts).[5] This decision will have an enormous impact on employers' ability to shield customers, clients and employees from interference and harassment by union agents.

In yet another recent case, the NLRB determined that threats of violence made by pro-union employees were acceptable because those threats did not meet the Board's vague, undefined standard of creating a "general atmosphere of fear and reprisal.[6] Lone Sun's policy is to not tolerate any threats of violence among our employees. It is disturbing that the Board does not share my view.

Regrettably, the NLRB's actions have been wholly consistent with the agenda set by the Obama administration, which has regularly put the interests of its union supporters ahead of fiscal responsibility and job growth. Through interpretations, regulations and executive orders, the administration has repealed union transparency requirements and consistently promoted union-backed policies, including flawed wage mandates under the Davis-Bacon Act and discriminatory project labor agreements (PLAs) on federal construction projects. The administration's policies cost taxpayers billions of dollars, negatively impact business opportunities for small businesses and limit employment opportunities for workers. PLAs, for example, discriminate against the vast majority (87 percent) of the construction workforce that chooses not to join a union by denying them an opportunity to work on federal projects.

The NLRB remains the main offender, as far as Lone Sun is concerned. Just recently, the Board took unprecedented steps to mandate where and how a company can operate and expand its business. As I'm sure many of you would agree, the federal government has no right to dictate where a company can or cannot create jobs or to prevent companies from speaking about costs related to union actions.

Conclusion

The Obama administration and the NLRB continue to pursue a labor agenda that stifles job creation and economic growth. With a current unemployment rate of nearly 18 percent in our industry, there is simply no place for corporate campaigns' disruptive and destructive practices.[7] It is unfortunate that the Board has chosen to turn the clock back more than 60 years to a time when secondary boycotts threatened to paralyze the industry and stifle job growth. Regardless of the Board's behavior, ABC members like me will not be deterred from their dedication to the merit shop philosophy.

On behalf of Lone Sun Builders and ABC, I'd like to again thank the Education and the Workforce Committee for holding today's hearing. I am pleased to see the Committee take a renewed interest in the problems that corporate campaigns—bannering in particular—can cause for honest, responsible contractors, and I look forward to working with you on this issue. Mr. Chairman, this concludes my formal remarks. I am prepared to answer any questions you may have.

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[5] See Roundy's vs. Milwaukee Building and Construction Trades (Case No. 30-CA-17185).

[6] See Mastec Direct TV; 356 NLRB No. 110 (2011).

[7] U.S. Department of Labor, Bureau of Labor Statistics, Construction Sector at a Glance: Employment, Unemployment, Layoffs, and Openings, Hires, and Separations, April 2010; available at: *http://www.bls.gov/iag/tgs/iag23.htm.*

LONE SUN BUILDERS

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Monday, June 06, 2011

House Education and the Workforce Committee
Subcommittee on Health, Employment, Labor and Pensions
Attn: Chairman Roe and Ranking Member Andrews
2181 Rayburn House Office Building
Washington, D.C. 20515

RE: Additional Testimony to the Post Hearing Record from Hearing held on May 26, 2011

Dear Chairman Roe and Ranking Member Andrews:

First and foremost I would like to thank you for the opportunity to testify before you on Thursday, May 26, 2011. It was an honor to appear before you and the subcommittee members to testify and share my story with you.

The following communication and enclosures include additional testimony for the post hearing record in accordance with the Rules of the House of Representatives. Specifically, my additional testimony for the record is in response to Congressman Hinojosa's direct questions to me regarding the First Amendment right to free speech.

Mr. Hinojosa asked if I agreed with the right to free speech under the First Amendment in which I responded in the affirmative. He then questioned how I viewed my right to counter-protest in relation to the same right under the First Amendment. I would like to make two (2) clarifications for the record as follows:

1. The right to free speech should include truthful, factual and honest statements. The carpenter's union has made claims that "We don't provide benefits, that we pay cash, and we don't meet area wage standards". Those are false statements; and to the contrary, when we counter-protest, we make truthful and honest statements and do not disparage the carpenter's union or its members. Just as the freedom of speech is limited to not yelling "Fire" in a crowded theatre, it stands to reason that truthful statements should be made by all organizations in a public setting.
2. The NLRB recent ruling on "bannering" did not allow the carpenter's union to trap office workers into a building or restrict access to their place of work. Nor did it allow for innuendo of threatening behavior or trespass on private property. Attached please find photographs from January 5, 2011 which clearly show the carpenter's union engaged in a mass picket where our office building was:
    a. Blocked for entry or exit by the picketers thus trapping workers inside.
    b. Our private property was trespassed. The property line was clearly marked prior to their presence but under the direction of Hal Jensen, the President of the union, who is also pictured and identified, the painted line was cleared by the picketers.
    c. Another picketer deemed it appropriate to show some sort of belt holster as he walked by me. I could only assume it to be a provocative gesture, or innuendo of a weapon holster.
    d. And finally to my point of the import of antagonists from other states, I present Mr. Hal Jensen, a resident of California who was directing the picketing, the trespassing and the trapping of our employees through blocking ingress and egress to our only public access.

The aforementioned information in conjunction with the enclosed photographs from January 5, 2011 are hereby submitted for the post hearing record in response to Mr. Hinojosa's questioning to me regarding my opinion on the First Amendment right to free speech.

Thank you once again for the opportunity to appear before your subcommitee.

Respectfully,

F. Chet Kamas
President

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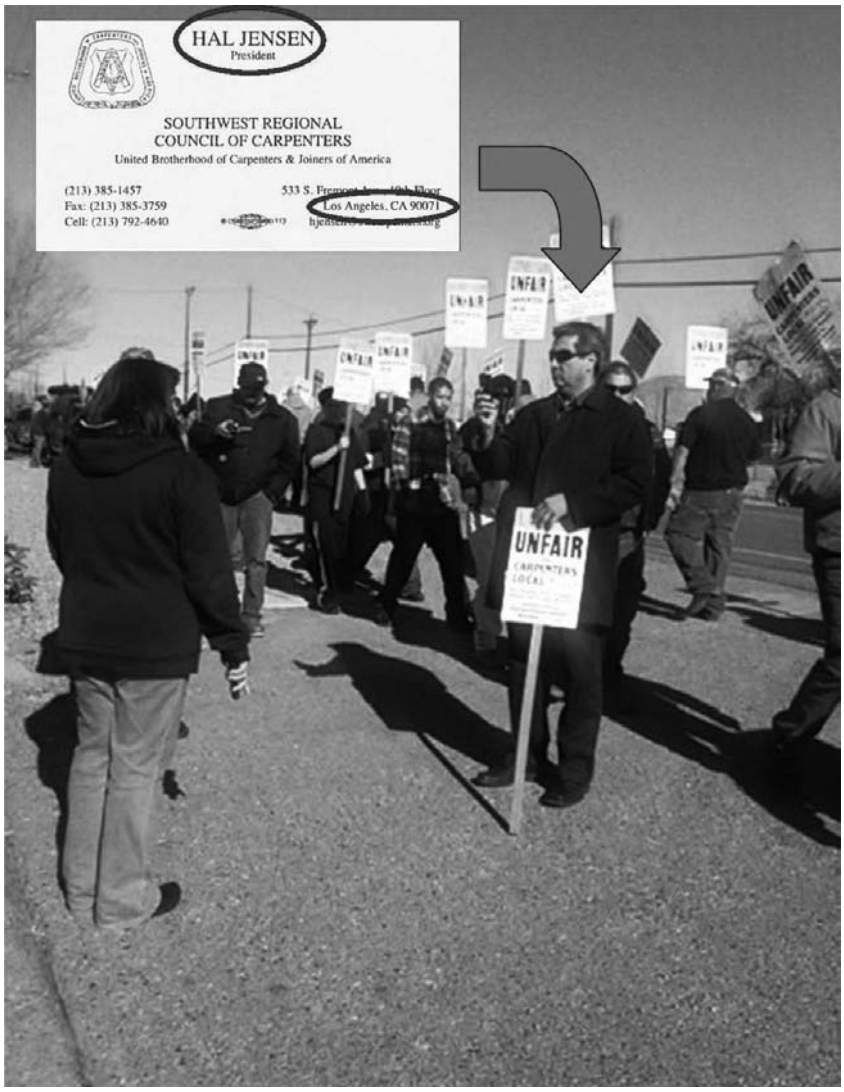
\\HQ-SRV1\FILES2\DEPARTMENTS\HUMAN RESOURCES\CARPENTERS UNION\TESTIMONY FOR POST HEARING RECORD.DOC

Enclosures: Four (4) photographs of the carpenter's union mass picket at 6813 Edith Blvd. E; AQBQ, NM 87107 on January 5, 2011

pc: Committee Members – House Education and the Workforce Committee – Subcommittee on Health, Employment, Labor and Pensions


HAL JENSEN
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INGRESS AND
EGRESS BLOCKED

Chairman ROE. Thank you, Mr. Karnas.
Ms. Fisk?

STATEMENT OF CATHERINE L. FISK, ESQ., LAW PROFESSOR, UNIVERSITY OF CALIFORNIA IRVINE SCHOOL OF LAW

Ms. FISK. My name is Catherine Fisk. I am the Chancellor's Professor of Law at the University of California at Irvine. Thank you for inviting me to testify today.

Corporations adopt codes of social responsibility for good reasons, and unions play an important role in helping companies adhere to their principles. A union corporate social responsibility campaign is designed to provide information to consumers, the public, and regulatory agencies about a company's labor practices. Thus, corporate social responsibility campaigns and union representation help protect good jobs for all workers—a goal endorsed by the House Committee on Education and Labor in 2007 in a pair of hearings on strengthening America's middle class.

I will address two questions today: First, should the National Labor Relations Board protect the rights of employees and unions to publicize their concerns about labor practices? And, second, is the NLRB appropriately exercising its statutory power to enforce the Federal labor law? The answer to both questions is "yes."

As to the first question, the First Amendment to the United States Constitution protects the right to speak out on matters of public concern, including a company's labor record. Displaying banners and picketing is one way to do this.

Generally speaking, the National Labor Relations Board's past efforts to prohibit peaceful bannering and street theater have been

rejected by the Federal courts. Quite rightly, therefore, the NLRB has now concluded that peaceful bannering and street theater cannot be prohibited by the National Labor Relations Act.

In a number of cases in 2010, the Board exhaustively canvassed the law on leafleting, banners, and picketing in light of the Supreme Court's evolving First Amendment jurisprudence. The Board quite reasonably concluded that the display of a banner is closer to the leafleting protected by the Supreme Court in the DeBartolo case than it is to the picketing prohibited by the Supreme Court in the 1950 Teamsters case.

The Board's decisions on banners are entirely reasonable. As the Supreme Court has emphasized for decades, the National Labor Relations Act gives the Board the responsibility to regulate and protect both worker and employer speech in the context of its labor relations setting.

The First Amendment does, however, allow the government to prohibit threats. In deciding when a statement constitutes a threat, the court has held that the NLRB should consider the power employers have over employees who fear for their jobs. Thus, Federal law can and does prohibit statements like, "Sleep with me or you are fired," or, "If you join a union or if you go on strike, I will fire you or eliminate your job." Thus, the Boeing case does not break new ground in the law and is entirely consistent with a half-century of labor law prohibiting employers from threatening to move or eliminate jobs, or from actually doing so, in retaliation for employees having exercised their statutory rights.

Moreover, the mere fact of a corporate campaign does not coerce a company in violation of the Federal racketeering law. Several Federal courts have rejected RICO challenges to union efforts to organize through card check and neutrality agreements.

Let me now turn to the second question: Is the NLRB appropriately exercising its powers to interpret and enforce the NLRA?

There is no basis for suggesting that the decision of the acting general counsel to issue a complaint in Boeing and the Board's request for amicus briefs in the Specialty Healthcare case is evidence that the Board is somehow exceeding its statutory authority.

While it is not unheard of for Members of Congress to criticize the Board when its decisions on important matters of labor law and policy are contrary to the Members' own preferences, it is important not to allow criticism of past decisions or concerns about the general direction of Board law to become efforts to coerce or intimidate the Board into resolving disputed issues of law and fact in pending cases.

As an independent agency that exercises powers to adjudicate cases subject to deferential review in the United States court of appeals, the NLRB is obligated by the National Labor Relations Act to decide cases based on evidence adduced in an evidentiary hearing. Due process, a constitutional right, requires any entity that formally adjudicates cases based on law and fact, including the NLRB and Federal and State trial courts, to have a degree of independence from legislative intervention.

The Board's recent decisions in the area of labor protests are entirely consistent with the trend in the United States Supreme Court's First Amendment jurisprudence. They are, moreover, a rea-

sonable agency response to the fact that the agency's prior and less speech-protective approach to leafleting, bannering, and other speech was inappropriate.

Whatever the views of the current congressional majority about the trend in the NLRB's case law on labor protests or other areas, there will be time enough for the losing party in those cases to seek review in the Federal courts of appeals. Congress should allow the Board to continue its work without intervention.

Thank you.

[The statement of Ms. Fisk follows:]

Prepared Statement of Catherine L. Fisk, Chancellor's Professor of Law, University of California, Irvine

My name is Catherine L. Fisk. Thank you for the opportunity to testify before the House of Representatives Subcommittee on Health, Employment, Labor and Pensions on the way in which the NLRB has regulated corporate (also known as comprehensive or corporate social responsibility) campaigns.

Since 2008, I have been the Chancellor's Professor of Law at the School of Law, University of California, Irvine. Previously, I was the Douglas Blount Maggs Professor of Law at Duke University School of Law, where I taught from 2004 to 2008, and was on the faculty of a number of other law schools since 1991. I am the coauthor of a casebook, Labor Law in the Contemporary Workplace (West Publishing Co. 2009), as well as two other books on labor and employment law (Labor Law Stories (Foundation Press 2005) and Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property (UNC Press 2009). I have published dozens of articles on labor and employment law in leading law reviews. I regularly teach Labor Law, Employment Law, Employment Discrimination Law, and a course on the legal profession, and previously have taught Civil Procedure, Legislation, and specialized courses on the law of the workplace, labor markets, and employee intellectual property. I am admitted to the bar in California and in the District of Columbia (inactive in DC), and have briefed and/or argued cases in state and federal trial and appellate courts.

I. The Benefits of Corporate Social Responsibility Campaigns in a Free Society with a Market Economy

The topic of this hearing raises significant issues at the intersection of labor law and the United States Constitution. A union corporate social responsibility campaign is designed to provide information to consumers, the public, and relevant regulatory agencies about a company's labor practices, including its wages, health and safety record, and environmental practices. Thus, at the heart of a corporate social responsibility campaign is the right to speak on matters of public concern and to petition government for the redress of grievances. See James J. Brudney, Collateral Conflict: Employer Claims of RICO Extortion Against Union Comprehensive Campaigns, 83 Southern California L. Rev. 731, 733 (2010). Corporate social responsibility campaigns are thus within the First Amendment's protections of freedom of association and the right to petition government for the redress of grievances, as well as freedom of verbal and written speech, including the dissemination of handbills and other written texts, the use of hand gestures, picketing, the display of placards and banners, symbolic conduct, and the expenditure of money to support or oppose political candidates and issues.

The Court's recent and strong protection for the First Amendment rights of companies (Citizens United v. Fed. Election Comm'n, 130 S. Ct. 876, 908 (2010), organizations (Boy Scouts of America v. Dale, 530 U.S. 640 (2000) (First Amendment protects right of Boy Scouts to discriminate against gays)), and individuals (United States v. Stevens, 130 S. Ct. 1577 (2010) (individual right to create, possess and sell offensive depictions of animals)) is based on a longstanding belief that in a democratic society with a market economy, the best protection for both liberty of conscience and robust economic growth lies in the electorate, consumers, and citizens having access to a full range of information on which to base their political, social and economic choices. As the Court recently emphasized: "The First Amendment confirms the freedom to think for ourselves." Citizens United, 130 S. Ct. at 908. Each of these decisions strikes some as wrong as a matter of policy and constitutional interpretation, but for the moment they are the law.

The purpose of corporate social responsibility campaigns is to provide workers, consumers, and citizens with the information we need, as the Court put it in Citi-

zens United, "to think for ourselves" about which products to buy, which businesses to patronize, and where to work. Corporations adopt codes of corporate responsibility for a reason, and there is no basis to restrict the ability of workers and their unions to hold companies to the policies and values they announce. There is no evidence that providing workers and consumers information about companies' labor practices and safety records has any adverse effect on the economy. Indeed, to the extent that workers and consumers are empowered by information to choose jobs and to patronize businesses that pay good wages and have strong safety and environmental records, the economy is strengthened. Elementary principles of economics show that information facilitates efficient transactions, prevents negative externalities, and prevents a race to the bottom in which companies gain a competitive advantage by driving down wages and externalizing the environmental or other safety costs of their operations.

Corporate social responsibility campaigns are designed to strengthen the middle class, a goal which the House Committee on Education and Labor in the 100th Congress endorsed in a pair of hearings on "Strengthening America's Middle Class" in 2007. See H. Rep. No. 110-23, text accompanying notes 25-43 (2007). As the House Report produced from those hearings found, the decline of unionization and the associated decline in wages and rise in economic insecurity have had devastating effects on the size and security of the American middle class, even as corporate profits have soared. Id. Employees who are paid well are more likely to have money to spend, which bolsters the economy. Indeed, Congress specifically found when it enacted the Wagner Act 1935, at the depth of the Great Depression, that promoting the rights of workers to unionize would eliminate the bargaining and wage inequality that "tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries." 29 U.S.C. §151. Employees with decent wages and benefits are more able to pay taxes to support education and infrastructure. They are less likely to depend on public assistance. Employees with decent wages and benefits are more likely to have health care for themselves and their children and are less likely to have to work two jobs. Decent wages support strong families and strong communities. See Steven Greenhouse, The Big Squeeze: Tough Times for the American Worker (2009).

Workers and their unions perform a valuable role when they publicize the labor records of companies and urge those sympathetic to their view to support their efforts to ensure that people work for good wages in safe conditions. It is well known that unionized workplaces are generally better paid. In 2010, the median usual weekly earnings of full-time workers who are union members is $917, whereas for nonunion workers it is $717. That is not a lot of money: it works out to $47,684 for a 52 workweek year, as compared to $37,284 for a nonunion worker, but the difference could be huge for a family struggling to make ends meet. Unionized workplaces are more likely to provide employee health insurance. Unionized workplaces are more likely to provide defined benefit pension plans, which (like Social Security benefits) provide a more secure retirement by placing the risk of economic downturn on the plan rather than on the individual. Union workers are more likely than nonunion workers to enjoy freedom from wage discrimination based on gender, race, or ethnicity. See U.S. Department of Labor, Bureau of Labor Statistics, Union Members in 2010, Jan. 21, 2011; U.S. Department of Labor, Bureau of Labor Statistics, National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2008, August 2008.

II. The First Amendment and Worker Free Speech Rights

The First Amendment protects speech that most people value, including the right of people and political candidates to speak on political issues (Brown v. Hartilage, 456 U.S. 45 (1982) (political candidate has a right to promise in an election campaign to work for a lower salary)), the right to take out advertisements in newspapers criticizing government officials for failing to protect civil rights (New York Times v. Sullivan, 376 U.S. 254 (1964)), the right to display flags, Stromberg v. California, 283 U.S. 359 (1931), and the rights of both workers and employers to speak on issues relating to unionization, wages, and working conditions, NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). The First Amendment also protects speech that many appreciate but some find problematic in some circumstances, such as the right of companies to advertise. Central Hudson Gas v. Public Serv. Comm'n, 447 U.S. 557 (1980). And, in a free society, the First Amendment necessarily also protects speech that many people find offensive, including picketing at women's health clinics and military funerals, Snyder v. Phelps, 131 S. Ct. 1207 (2011); Schenck v. Pro-Choice Network, 519 U.S. 357 (1997); Madsen v. Women's Health Center, Inc., 512

U.S. 753 (1994), the burning of crosses and flags, Texas v. Johnson, 491 U.S. 397 (1989); United States v. Eichman, 496 U.S. 310, 318 (1990), and burning a cross on a person's lawn, RAV v. City of St. Paul, 505 U.S. 377, 391 (1992).

A. The Contemporary First Amendment Protection for Picketing and Protest

In recent years, the Court has made clear that picketing—including displaying signs and people patrolling—is protected speech under the First Amendment that enjoys the highest level of constitutional protection when it addresses any matter of political, social or other concern to the community. Thus, the Court upheld picketing at a military funeral, Snyder v. Phelps, 131 S. Ct. 1207 (2011), and picketing outside clinics that provide family planning services, Schenck v. Pro-Choice Network, 519 U.S. 357 (1997); Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994). Even offensive and intimidating speech and symbolic conduct is protected by the First Amendment. Snyder, 131 S. Ct. at 1216 ("The arguably 'inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter of public concern'" and is thus entitled to the highest level of First Amendment protection), quoting Rankin v. McPherson, 483 U.S. 378, 387 (1987)).

The First Amendment protection generally means that government cannot prohibit or regulate speech or symbolic conduct expressing a political message based on content unless the regulation is narrowly tailored to a compelling governmental interest. Turner Broadcasting System, Inc. v. Federal Communications Comm'n, 520 U.S. 180 (1997). The government can prohibit threats, Virginia v. Black, 538 U.S. 343 (2003), and can consider the coercive power employers have over employees in deciding which employer statements to employees are threats ("sleep with me or you're fired" or "if you join a union, I'll fire you"). See NLRB v. Gissel Packing Co., 395 U.S. 575 (1969); NLRB v. Exchange Parts Co., 375 U.S. 405 (1964). But saving the targets of offensive speech from psychological or economic harm is usually not a compelling governmental interest. Thus, the Court struck down prohibitions on flag burning, Texas v. Johnson, 491 U.S. 397 (1989); United States v. Eichman, 496 U.S. 310, 318 (1990), on burning a cross on a person's lawn, RAV v. City of St. Paul, 505 U.S. 377, 391 (1992), on shouting at women entering a medical clinic seeking family planning services, Schenck, 519 U.S. 357; Madsen, 512 U.S. 753, and on picketing at a military funeral blaming the soldier's death on God's vengeance for American tolerance for gays and lesbians, Snyder, 131 S. Ct. 1207. The Court has struck down prohibitions on picketing directed at individuals in residential neighborhoods when the prohibition discriminated on the basis of subject matter. Carey v. Brown, 447 U.S. 455, 465 (1980). Thus even when it is alleged that the picketing infringes the rights of the targets of the protest by making it harder for them to run their business without disruption, the Court has rejected regulation.

B. The Older Rules Applicable to Labor Picketing

Given the robust contemporary First Amendment protection for picketing and protest, the treatment of labor picketing is anomalous. In International Brotherhood of Teamsters v. Vogt, the Court upheld a state law prohibiting peaceful picketing by union members at a work site because picketing "involved more than just communication of ideas * * * since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated." 354 U.S. 284, 289 (1957). Since then, the Court has upheld against constitutional challenge the application of federal labor law to picketing encouraging a strike by employees other than those employed by an entity with whom the picketing employees have a labor dispute. NLRB v. Denver Building & Construction Trades Council, 341 U.S. 675 (1951). The implicit rationale of these cases is that labor picketing is a uniquely persuasive form of speech that induces union members to refuse to work regardless of their views on the merits of the labor dispute. In upholding a prohibition on picketing calling for a consumer boycott of a business if a successful boycott would threaten the business with ruin or substantial financial loss, the Court emphasized the harm that picketing can cause when consumers are persuaded of the union's message. NLRB v. Retail Store Employees Union, Local No. 1001 (Safeco Title Ins. Co.), 447 U.S. 607 (1980).

Under current First Amendment doctrine, these decisions are difficult, if not impossible, to justify. In the first place, they allow Congress to treat picketing engaged in by employees affiliated with a labor union more harshly than other picketing. Today, such a distinction would fail, inasmuch as the Court has struck down bans on worksite picketing and worksite calls for consumer boycotts when engaged in by civil rights activists. Police Department of the City of Chicago v. Mosley, 408 U.S. 92 (1972); NAACP v. Claiborne Hardware Co., 458 U.S. 886, 912 (1982). The Court recently affirmed that the First Amendment prohibits differential regulation of

speech depending on the identity of the speaker: "[T]he Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvantaged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration." Citizens United v. Fed. Election Comm'n, 130 S. Ct. 876, 899 (2010). Second, the old labor picketing cases allow government to proscribe speech based on its content: picketing requesting workers to withhold their labor is prohibited; picketing urging workers to work or requesting consumers to withhold their patronage is not. Today, of course, this sort of content-based or viewpoint-based regulation is unconstitutional, as content-based restrictions are invalid unless strict scrutiny is met. Mosley, 408 U.S. 92; Carey, 447 U.S. 455. Finally, the notion that labor picketing can be prohibited because it is so persuasive to workers and consumers sympathetic to labor's causes is simply impossible to square with the rest of free speech jurisprudence, which does not allow government to prohibit speech simply because some find it persuasive.

The anomalous treatment of labor picketing can be understood as an historical artifact when we recall that the Supreme Court developed the law of labor picketing before it developed its modern robust protections for picketing and other forms of symbolic speech. Thus, it made sense to the Court in the 1950s to hold that picketing was not pure speech because it involves conduct (walking). Although there was some judicial protection for symbolic speech before 1950, it was not until the late 1960s that the Court clearly articulated a test for First Amendment protection for symbolic speech and increased the constitutional protection for it. Once the Court expanded First Amendment protection for symbolic conduct in the 1960s and 1970s, United States v. O'Brien, 391 U.S. 367 (1968) (burning draft cards); Spence v. Washington, 418 U.S. 405 (1974) (hanging a United States flag upside down with a peace symbol affixed to it), the differential treatment of labor picketing lost its conceptual moorings.

As First Amendment protection for picketing by civil rights and other groups has expanded in recent decades, the Court has begun to accord greater First Amendment protection to non-picketing labor protest. In essence, the Court distinguishes between labor picketing (still subject to the old cases) and other forms of peaceful labor protest, which enjoys constitutional protection more akin to that enjoyed by civil rights and other protest. Thus, the Court held that labor handbilling at a work site is not prohibited by federal labor law. DeBartolo Corp. v. Florida Gulf Coast Trades Council, 485 U.S. 568 (1987). The Court reasoned that the distribution of handbills is "expressive activity" and that "legislative proscription of such leaflets would pose a substantial issue of validity under the First Amendment." 485 U.S. at 576. Similarly, in holding that the NLRA does not prohibit picketing urging a consumer boycott of a product, the Court reasoned that its construction of the statute "reflect[s] concern that a broad ban against peaceful picketing might collide with the guarantees of the First Amendment." NLRB v. Fruit and Vegetable Packers, Local 760 (Tree Fruits), 377 U.S. 58, 63 (1964). Similarly, the Court has read the federal labor laws to protect the rights of employees to distribute newsletters and leaflets in the workplace urging workers to support legislation and political candidates protective of workers' rights. Eastex, Inc. v. NLRB, 437 U.S. 556 (1978).

In attempting to reconcile the older cases upholding regulation of labor picketing with recent cases affording expansive protection for picketing, handbilling, and other forms of verbal and symbolic speech, the Court has emphasized that the federal labor laws strike a "delicate balance between union freedom of expression and the ability of neutral employers, employees, and consumers to remain free from coerced participation in industrial strife." NAACP v. Claiborne Hardware Co., 458 U.S. 886, 912 (1982). The NLRB is obligated to construe the NLRA so as to maintain that delicate balance in the facts of each case. Its decisions are entitled to deference if the factual determinations are supported by substantial evidence on the record as a whole, its interpretation of the statute is rational, and "its explication is not inadequate, irrational, or arbitrary." 29 U.S.C. §159(e); Allentown Mack Sales and Serv., Inc. v. NLRB, 522 U.S. 359, 364 (1999).

The continuing vitality of the Supreme Court's labor picketing cases may be doubtful given the Court's expansive protection for picketing on myriad other topics, including issues pertaining to fair treatment at work. Police Department of the City of Chicago v. Mosley, 408 U.S. 92 (1972). Nevertheless, the law of labor picketing and protest draws two crucial distinctions: (1) whether the speech is picketing or is instead handbilling, or other comparably expressive and non-coercive communication, and (2) whether the speech is at a worksite and is directed at workers or whether it is directed at consumers or the public. The law with respect to two cat-

egories of labor speech is settled under Supreme Court law: picketing directed at workers can be regulated, and handbilling directed at consumers cannot. DeBartolo Corp. v. Florida Gulf Coast Trades Council, 485 U.S. 568 (1987). The Supreme Court has not addressed the outer limits of regulation of labor picketing directed only or primarily at the public, nor has it addressed the constitutional permissibility of prohibiting non-picketing speech directed only or primarily at workers, at least when the speech occurs at the worksite and when it does not call for an immediate work stoppage.

This leaves two categories of labor protest of uncertain status: peaceful picketing directed at the public (which is generally protected by the statute, but whose constitutional status has not been addressed) and dissemination of leaflets, display of banners, and other comparable forms of pure speech or non-coercive conduct directed at workers (which, similarly, is generally protected by the statute but whose constitutional status has not been addressed by the Court). It is these two categories of speech that the Board has recently held entitled to First Amendment protection.

C. The Lower Court and NLRB Approaches to Labor Protest

In the absence of Supreme Court precedent, the NLRB and the federal courts of appeals have reached an array of conclusions on the statutory and constitutional protection for picketing directed at the public and leafleting and other non-coercive protest directed at workers. Although the cases are not entirely consistent, overall they have found protection for such expression. Three types of protest activity have drawn the most litigation: display of banners; distribution of handbills; and various forms of street theater, including the appearance at a worksite of employees dressed up in rat costumes and the staging of mock funerals. As will be explained below, generally speaking the NLRB's past efforts to prohibit peaceful bannering and street theater have been rejected by the federal courts. It is entirely appropriate—indeed, it is explicitly contemplated by the statutory scheme—that the Board has now concluded that peaceful bannering and street theater cannot be prohibited by the NLRA.

1. BANNERS AND LEAFLETS

The courts of appeals have held that the display of a banner may not be prohibited by the NLRA unless the message on the banner would lead consumers and passersby to conclude that the worksite is dangerous or unhealthful. In Overstreet v. United Brotherhood of Carpenters, 409 F.3d 1199 (9th Cir. 2005), on public sidewalks some distance from retailers that contracted with contractors using non-union labor and paying low wages, the Carpenters Union displayed banners reading "Shame on [name of retailer]" in large letters, with the words "Labor Dispute" in smaller letters underneath. The NLRB General Counsel issued a complaint against the Carpenters Union and sought an injunction against the activity under section 10(l) of the NLRA. The court of appeals rejected the General Counsel's interpretation of the statute and held that the bannering was protected by the First Amendment and could not be equated with signal picketing prohibited under the Supreme Court's labor picketing jurisprudence. The court explained:

[T]he reliance on the physical presence of speakers in the vicinity of the individuals they seek to persuade * * * is no basis for lowering the shield of the First Amendment or turning communication into statutory "coercion."

Nor are the union members' activities "coercive" for any reason other than their physical presence. The union members simply stood by their banners, acting as human signposts. Just as members of the public can "avert [their] eyes" from billboards or movie screens visible from the public street, they could ignore the Carpenters and the union's banners. If anything, the Carpenters' behavior involved less potential for "coercing the public than the handbilling in DeBartolo, as there was no one-on-one physical interaction or communication." 409 F.3d at 1214.

When the message on the banner would lead consumers to conclude that the targeted business is dangerous or unhealthful (as where the union displayed a banner saying "This Medical Facility is Full of Rats"), a divided panel of the Ninth Circuit, over the dissent of Judge Kozinski, held the banner was defamatory. San Antonio Community Hospital v. Southern California District Council of Carpenters, 125 F.3d 1230 (9th Cir. 1997). Distinguishing other cases in which unions had referred to employers as "rats" on the ground that the audience would know that rat is a slang term of art for an employer paying substandard wages, the court found that passersby might think that the hospital in this case had a rodent problem. Id. at 1235. Alternatively, if a union distributes handbills to workers (rather than to consumers and the public) and a work stoppage immediately ensues, a divided panel of the D.C. Circuit held that the handbilling was tantamount to picketing urging a strike and could be prohibited. Warshawsky & Co. v. NLRB, 182 F.3d 948 (D.C. Cir. 1999).

2. STREET THEATER AND THE RAT

In labor disputes across the country, workers and their unions have engaged in a variety of forms of street theater as protest. In a few cases, workers staged a mock funeral accompanied by signs proclaiming that patronizing the target business "should not be a grave decision." Sheet Metal Workers' International Association, Local 15 v. NLRB, 491 F.3d 429 (D.C. Cir. 2007); Kentov v. Sheet Metal Workers, Local 15, 418 F.3d 1259 (11th Cir. 2005). In another few cases, employees dressed up in rat costumes and strolled around public sidewalks near job sites with leaflets complaining that targeted businesses were rats because they paid substandard wages. Construction & General Laborers Local Union 4 (Quality Restorations), Case 13-CC-2006, Advice Memorandum (January 19, 1996) (individual dressed as a rat who patrolled in front of association confronted customers or employees and thus was not engaged in protected free speech). Northern California Regional Council of Carpenters, Cases 32-CC-1469-1; 32-CC-1480-1; 32-CC-1482-1; 32-CC-1483-1; 32-CB-5451-1, Advice Memorandum (October 31, 2002) (person in rat costume who patrolled in front of employer premises was confrontational and coerced employers and thus violated section 8(b)).

At least one protest involved inflating a 16-foot-tall balloon in the shape of a cartoon rat. Sheet Metal Workers' Int'l Assn, 491 F.3d at 432. In other cases, janitors have conducted sing-alongs on the sidewalk outside of commercial office buildings or paraded around with mops and brooms. Service Employees Union Local 87, 312 NLRB 715 (1993). And in at least one instance which appears never to have resulted in a published agency or judicial decision, hotel room cleaners supported their demand for better wages by wheeling a bed onto a public sidewalk outside a hotel and demonstrated the physically arduous labor of changing the sheets on hotel beds.

There have been only a few court of appeals decisions on the permissibility of worker street theater, and they have reached conflicting conclusions. The D.C. Circuit, in an extensive and scholarly opinion by Chief Judge Douglas Ginsburg, held that the mock funeral could not constitutionally be prohibited, Sheet Metal Workers' Int'l Assn, 491 F.3d at 439. The Eleventh Circuit, in an opinion by Judge Kravitch, held that the mock funeral was more like picketing than it was like leafleting and thus could be prohibited. Kentov, 418 F.3d at 1266. Because review may be had in the D.C. Circuit in any case decided by the NLRB, 29 U.S.C. §159(f), it is not unreasonable for the Board to follow the D.C. Circuit's guidance and hold that banners and street theater cannot constitutionally be prohibited under section 8(b).

The NLRB's recent efforts to reconcile its own jurisprudence on the distinction between picketing, leafleting, bannering, and street theater are entirely reasonable. In Eliason & Knuth, 355 NLRB No. 159 (2010), the Board exhaustively canvassed the Supreme Court's and its own prior treatment of picketing and other labor protest in light of the Court's historical and evolving First Amendment treatment of the various forms of symbolic speech. The Board quite reasonably concluded that the display of a banner is closer to the leafleting protected by the Court in DeBartolo than to the picketing prohibited in Vogt and its progeny. See also Carpenters Local Union No. 1506 (Marriott), 255 NLRB No. 219 (2010) (following Eliason & Knuth). The Board concluded in Southwest Regional Council of Carpenters, 356 NLRB No. 88 (2011), that the display of banners is not prohibited by the statute even if the banners are at construction sites rather than at places frequented by the general public. The Board concluded that the bannering cannot be prohibited in the absence of evidence that the display of a banner is intended as a covert signal to engage in an illegal secondary work stoppage (as might be the case if the employees picket) rather than as an effort to persuade workers, consumers, and other friends of labor about the harm caused by the employers paying substandard wages.

These recent efforts to reconcile the First Amendment rights of workers to publicize the nature of their labor dispute with the Supreme Court's treatment of labor picketing are entirely reasonable. As the Supreme Court has emphasized for decades, the National Labor Relations Act gives the Board the responsibility to regulate and protect both worker and employer speech "in the context of its labor relations setting." NLRB v. Gissel Packing Co., 395 U.S. 575 (1969). See also NLRB v. Exchange Parts Co., 375 U.S. 405 (1964). In both Gissel and Exchange Parts the Court deferred to the Board's determination of whether particular speech was protected or prohibited by the NLRA. The Board has for 75 years attempted to decide, based on the evidence in cases and its expertise in labor relations, which speech by employees and by employers should be protected by the NLRA, prohibited by the NLRA, or left unregulated. Given that the weight of court of appeals decisions have rejected the Board's previous efforts to prohibit peaceful dissemination of leaflets or display of banners, as discussed above, and given the Supreme Court's recent unequivocal First Amendment protection for picketing and other protest, the Board

reasonably has concluded that bannering and leafleting are not prohibited by section 8(b) of the NLRA. The Board would also be reasonable to conclude that other forms of symbolic speech, including street theater such as the rat and mock funerals, cannot be proscribed unless the conduct blocks ingress or egress to the property or contains false and defamatory statements. Indeed, given the Supreme Court's recent 8-1 decision in Snyder v. Phelps upholding offensive picketing at military funerals, the Board's prior jurisprudence allowing extensive prohibitions of worker protest based on its content and even its viewpoint is constitutionally suspect. Thus, the Board is well within its broad statutory authority to interpret the NLRA in light of workplace realities and to develop a labor policy that grants robust protection to worker speech. Indeed, its decisions in this area are all but compelled by the protection courts of appeals and the Supreme Court have granted to non-picketing labor protest.

D. Corporate Social Responsibility Campaigns Do Not Violate RICO

The title of this hearing suggests possible concern about whether union corporate social responsibility campaigns are desirable as a matter of policy or permissible as a matter of law. Inasmuch as they are designed to enforce workers' statutory rights to unionize and to inform consumers and workers about a company's labor, safety, and environmental practices, they are good policy. Whatever one's views about their desirability as a matter of policy, however, there is no basis in law for an outright prohibition. As noted above, to the extent that a corporate social responsibility campaign involves publicity about a company's labor, safety, or environmental record, it is protected by the First Amendment. To the extent that it involves invoking regulatory proceedings or litigation challenging the legality of particular practices, the usual rules governing meritorious litigation apply. But to the extent that the argument is that the mere fact of a corporate campaign, including an effort to secure recognition through card-check and a neutrality agreement, coerces a company, the law is on the unions' side. To date, several federal courts have rejected RICO challenges to union efforts to organize through card check and neutrality agreements. Cintas Corp. v. UNITE HERE, 601 F. Supp. 2d 571 (S.D.N.Y.), aff'd, 355 F. App'x 508 (2d Cir. 2009); Wackenhut Corp. v. Service Employees Int'l Union, 593 F. Supp. 2d 1289 (S.D. Fla. 2009). See generally Brudney, supra, 83 S. Cal. L. Rev. 731.

III. Congress Should Not Interfere With the NLRB's Adjudication of Pending Cases

It appears from the public commentary of some Members of Congress that some of the NLRB's recent decisions on labor protest and other topics, along with the decision of the Acting General Counsel to issue a complaint one case, have caused consternation. While it is not unheard of for Members of Congress to criticize the Board when its decisions on important matters of labor law and policy are contrary to the Members' own preferences, it is important not to allow criticism of past decisions or concerns about the general direction of Board law to become efforts to coerce or intimidate the Board into resolving disputed issues of fact in pending cases. There is no basis for suggesting that the decision of the Acting General Counsel to issue a complaint in one case and the Board's request for amicus briefs in another is evidence that the Board is somehow exceeding its statutory authority. Specialty Healthcare and Rehabilitation Center of Mobile and United Steelworkers, District 9, 15-RC-8773, and Boeing and International Ass'n of Machinists District Lodge 751, 19-CA-32431.

As an independent agency that exercises powers to adjudicate cases subject to deferential review from the courts of appeals under the substantial evidence standard, Universal Camera Corp. v. NLRB, 340 U.S. 474 (1962), the NLRB is obligated by the National Labor Relations Act to decide cases based on evidence adduced in an adversary hearing. Its adjudicatory processes are relatively formal as compared to those of many agencies. It acts in the place of a United States District Court in enforcing the statutory rights of individuals and entities. Like any entity that adjudicates cases based on law and fact, including federal and state trial courts, principles of separation of powers and due process necessitate a degree of independence from legislative oversight as the agency carries out its adjudicatory role.

Although a number of federal court decisions have addressed the propriety of Congressional interference in agency processes, the most closely on point is Pillsbury Co. v. Federal Trade Commission, 354 F.2d 952 (5th Cir. 1966). In Pillsbury, a Senate subcommittee interrogated the Chair of the FTC and members of his staff regarding a pending case and expressed views on how it should be decided. After the FTC later decided the case along the lines suggested by the Senators, the court of appeals found the Senate inquiry to be improper and to have infringed the due process rights of the litigants to a "fair trial" and to be free from the "appearance of impartiality." Id. at 964. The court of appeals said that when a congressional inves-

tigation "focuses directly and substantially upon the mental decisional processes of a Commission in a case which is pending before it, Congress is no longer intervening in the agency's legislative function, but rather, in its judicial function." Id. Accord: Koniag v. Andrus, 580 F.2d 601, 610 (D.C. Cir. 1978) (holding that a letter sent from a chair of a House committee to the Secretary of Interior regarding the Secretary's review of decisions of the Bureau of Indian Affairs created the appearance of a compromise of the Secretary's impartiality and remanding to the new Secretary of the Interior for a fair and dispassionate treatment of the matter).

Later cases that have rejected challenges to Congressional interference in agency processes have emphasized that the interference did not express a view on the merits but was instead intended only to expedite the decision, Gulf Oil Corp. v. Federal Power Commission, 563 F.2d 588 (3d Cir. 1977), or that there was no evidence that the intervention had an effect on the agency's decision, ATX, Inc. v. U.S. Dep't of Transp., 41 F.3d 1522, 1529-30 (D.C. Cir. 1994); State of California v. Federal Energy Regulatory Comm'n, 966 F.2d 1541, 1552 (9th Cir. 1992), or that the agency proceeding was informal, United States ex rel. Parco v. Morris, 426 F. Supp. 976 (E.D. Pa. 1977). See generally Morton Rosenberg & Jack H. Maskell, Congressional Research Serv., RL 32113, Congressional Intervention in the Administrative Process: Legal and Ethical Considerations (2003).

Conclusion

The Board's recent decisions in the area of labor protest are entirely consistent with the trend in the United States Supreme Court's First Amendment jurisprudence. They are, moreover, a reasonable agency response to the fact that the agency's prior and less speech-protective approach to leafleting, street theater, and other non-picketing protest met with hostility from several federal courts. Wholly apart from the question whether the recent cases upholding worker protest rights are compelled by the First Amendment, there is no evidence that robust protection for employee speech has any adverse effect on job creation or the health of the American economy, and there is some evidence suggesting that it helps both the economy and the polity by enabling consumers and workers make informed decisions to support companies that adopt responsible labor and environmental practices that are consistent with the consumers' and workers' values.

Whatever the views of the current Congressional majority about the trend of the NLRB's case law on labor protest or other areas, there will be time enough for the losing party in those cases to seek review in the federal courts of appeals and for Members of Congress to call hearings to criticize the decisions later. To interfere with the Board's adjudication of pending cases jeopardizes the due process rights of all the parties to the case and casts doubt on the ability of the administrative state to fairly adjudicate the statutory and constitutional rights of the parties that appear before it.

Chairman ROE. Thank you, Ms. Fisk.

And Mr. Fritts?

STATEMENT OF JONATHAN C. FRITTS, ESQ., PARTNER, MORGAN, LEWIS & BOCKIUS

Mr. FRITTS. Chairman Roe, Ranking Member Andrews, members of the subcommittee, thank you for inviting me to testify today. I am honored to appear before you.

I am a partner in the law firm of Morgan, Lewis & Bockius. I represent employers in many industries regulated by the National Labor Relations Act.

The act serves an important function in our national economy. Its primary purpose is to encourage unions and employers to resolve their disputes peacefully through the collective bargaining process. The act protects the right of employees to strike and the right of employers to lock out, but the act does not assume that the parties will be engaged in a constant state of industrial warfare. To the contrary, the act assumes that the threat of a strike or lockout will provide a strong incentive for the parties to resolve their disputes at the bargaining table. Once the parties reach an agree-

ment, the act assumes that there will be labor peace during the term of the agreement.

This system of collective bargaining was designed at a time when the strike was the primary weapon used by labor to exert pressure on an employer. What has changed in recent years is that unions increasingly believe that the strike is an ineffective weapon, so they are abandoning it in favor of the corporate campaign.

Whereas the act carefully regulates the right to strike, corporate campaigns are difficult to regulate because they involve conduct that is arguably protected by the First Amendment. Strikes also differ from corporate campaigns in that a strike necessarily entails a loss of pay for the striking employees, which creates an incentive to resolve their dispute as quickly as possible. In contrast, corporate campaigns result in little or no economic harm to the employees, which means that the union can engage in a prolonged campaign without any real pressure from the employees to resolve the dispute.

Before I discuss some recent NLRB decisions that involve corporate campaign tactics, I want to express my respect for the Board and its many employees who have dedicated their careers to administering the act. The issues presented to the Board often do not have easy answers, and there are multiple interests at stake. The interests of employees, unions, and employers are often in conflict, but a balance must be reached. It is said that people who work in labor relations are doing their job well when everyone is angry with them. I think that saying holds true for the Board.

Employers seem to be more upset with the Board these days than unions or employees. The Board has issued a number of decisions that provide additional weapons for unions and employees to use against their employer in a corporate campaign.

One of these cases holds that unions have the right to display large banners calling for a boycott of a secondary employer without violating the act's secondary boycott provisions. Another case held that employees of AT&T had the right to wear T-shirts that said "inmate" on the front and "prisoner of AT&T" on the back while they were on the job and visiting AT&T's customers in their homes. And another recent case held that off-duty employees of a restaurant located in a hotel had the right to distribute handbills to hotel customers while on hotel property.

There has been a lot of publicity surrounding the acting general counsel's decision to prosecute a complaint against Boeing based on its decision to locate some additional 787 assembly work in South Carolina rather than at its union-represented facilities in Washington State and Oregon.

What is remarkable to me about the Boeing case is that the acting general counsel found that Boeing satisfied its duty to bargain with the machinists' union over the decision to locate this work in South Carolina. The Board found that the union had waived its right to bargain on the issue in its collective bargaining agreement with Boeing.

In my view, the prosecution of the Boeing case does not advance the core purpose of the act, which is to promote industrial peace through the process of collective bargaining. The Boeing dispute arguably was resolved at the bargaining table when the union recog-

nized Boeing's right to determine the location where the work will be performed. Instead, the dispute has exploded into an intense public relations campaign as a result of the acting general counsel's prosecution.

Because Board litigation often takes years to resolve, the dispute is not likely to end anytime soon. This is an unfortunate outcome for all parties, regardless of who ultimately prevails in the litigation.

This concludes my prepared testimony. Thank you.

[The statement of Mr. Fritts follows:]

Prepared Statement of Jonathan C. Fritts, Partner, Morgan, Lewis & Bockius LLP

Chairman Roe, Ranking Member Andrews, and Members of the Subcommittee, thank you for your invitation to participate in this hearing. I am honored to appear before you today.

By way of introduction, I am a partner in the law firm of Morgan, Lewis & Bockius LLP, where I represent employers in many industries under the National Labor Relations Act, including manufacturing, construction, maritime, retail food, and higher education. I am also an Adjunct Professor at Georgetown University Law Center, where I co-teach a course on labor law with a retired chief counsel of the National Labor Relations Board. Beginning in September 2011, I will serve as the management co-chair of the American Bar Association's Committee on Practice and Procedure under the National Labor Relations Act.[1]

In my testimony today, I will describe the phenomenon of union corporate campaigns and how they relate to the structure and policies of the National Labor Relations Act (NLRA or Act).[2] I will also discuss recent National Labor Relations Board (NLRB or Board) cases that relate to union corporate campaign tactics and what effect those cases have on employers that are the target of a corporate campaign. Finally, I will address the Boeing case and its relevance to the subject matter of this hearing.

What Is a Corporate Campaign?

One of the most frequently cited definitions of a corporate campaign is attributed to the current President of the AFL-CIO, Richard L. Trumka:

Corporate campaigns swarm the target employer from every angle, great and small, with an eye toward inflicting upon the employer the death of a thousand cuts rather than a single blow.[3]

Unions engage in corporate campaigns as an alternative to calling a strike as a means of applying pressure on employers. This is because unions increasingly believe that the strike is an ineffective weapon of industrial warfare.[4] A strike necessarily entails a loss of pay for the striking employees, which tends to have a mitigating effect on the duration of the labor dispute. Because both parties (the employer and the union-represented employees) suffer economic consequences during a strike, there is an incentive on both sides of the table to resolve the labor dispute as quickly as possible.

During a corporate campaign, however, employees generally continue to work and receive pay. Therefore, employees suffer little or no economic harm as a result of the union's campaign against their employer. This means that a union can wage a prolonged corporate campaign without any real pressure from the employees to resolve the underlying dispute. Consequently, the dispute may persist for as long as the employer is willing to resist the union's demands and absorb the economic damage caused by the campaign.

Corporate campaigns are used in various types of labor disputes. They are used during an organizing campaign in order to pressure an employer to remain neutral during the campaign and to recognize the union without an election. They also can be used as a means of creating leverage for the union in the context of negotiating a collective bargaining agreement on behalf of a group of employees that the union already represents.

The target of the corporate campaign may not be the employer with which the union has a labor dispute. For instance, the union may engage in corporate campaign tactics against the employer's customers, suppliers, lenders, creditors, or investors as a means of creating secondary pressure against the employer.[5]

The types of tactics employed in a corporate campaign vary widely, and are limited only by the union's imagination. They typically involve efforts to generate nega-

tive publicity for the employer though print, radio, or television advertisements or the display of billboards, banners, or inflatable rats. The union may coordinate these public relations activities with civic or religious leaders, politicians, or public interest groups. Corporate campaigns can involve calls for boycotts of the employer's products, including through picketing, handbilling, or demonstrations at stores or other retail outlets. The union also may seek to apply personal pressure against the corporation's officers and directors, through picketing or demonstrations at their residences or at social events.

Corporate campaigns may involve other forms of pressure that have no apparent connection to the labor dispute. For instance, the union may lobby legislators or regulators to withhold government contracts, to block zoning approvals, or to deny public financing to the employer that is the target of the corporate campaign. The union also may file charges or initiate legal action under a variety of state or federal laws, such as environmental laws, securities laws, or employment laws. These claims or charges may then be withdrawn as soon as the labor dispute is resolved.

Does Federal Labor Law Regulate Corporate Campaign Tactics?

Corporate campaigns must be understood in the context of the structure and policy of the NLRA. The basic policy objective of the Act is to promote industrial peace through the process of collective bargaining.[6] Somewhat paradoxically, the right to strike (and the employer's corresponding right to lockout) promotes industrial peace by creating an incentive for the parties to negotiate and resolve their differences at the bargaining table.[7] In most cases, the parties do not engage in a strike or a lockout, but instead decide to enter into an agreement that reflects each side's actual or perceived economic leverage.

Once the parties have entered into a collective bargaining agreement, the Act assumes that there will be labor peace during the term of the agreement. Section 8(d) of the Act prohibits the parties from engaging in a strike or lockout until at least 60 days after they have provided written notice of their desire to negotiate a new agreement.[8] In addition, the party seeking to modify the agreement is obligated to notify the Federal Mediation and Conciliation Service and any equivalent state agency, so that these agencies may help the parties resolve their negotiations peacefully.[9]

To further ensure industrial peace during the term of a collective bargaining agreement, Congress enacted Section 301 of the Labor Management Relations Act, which creates a federal cause of action to enforce the terms of the collective bargaining agreement, including the duty to resolve disputes through arbitration.[10] The legislative history of Section 301 clearly reflects Congress's expectation that employers should be able to run their businesses without the threat of economic warfare during the term of a collective bargaining agreement:

The chief advantage which an employer can reasonably expect from a collective labor agreement is assurance of uninterrupted operation during the term of the agreement. Without some effective method of assuring freedom from economic warfare for the term of the agreement, there is little reason why an employer would desire to sign such a contract.[11]

Corporate campaigns are designed to "sidestep the labor laws" by creating new forms of economic warfare as an alternative to the carefully regulated right to strike, either during or after the term of a collective bargaining agreement.[12] There is no provision of the NLRA that regulates "corporate campaigns." To the contrary, unions typically employ corporate campaign tactics that cannot be regulated because they fall within the arguable scope of First Amendment speech or petitioning activity.[13] Thus, while a corporate campaign may have a destructive impact on an employer's business, the employer is largely without a remedy to counteract the union's campaign.

Recent NLRB Cases That Relate to Union Corporate Campaign Tactics

Some recent NLRB decisions provide additional weapons for unions to use in a corporate campaign. For instance, the Board recently decided that a union's display of large (3 to 4 feet high and 15 to 20 feet wide) stationary banners, calling for a boycott of a neutral employer's business, did not violate the Act's secondary boycott provisions.[14] The Board held that the display of these banners outside the secondary employer's facility did not "coerce" the secondary employer and therefore did not constitute an unlawful secondary boycott under the Act.

As a result of this decision, unions are more likely to utilize large banners in a corporate campaign. Banners such as these typically are not directed against the employer with which the union has a labor dispute. Instead, they are used to pressure companies that do business with the target employer. Displaying a large, and often provocative, banner may be as effective, if not more effective, than traditional

picketing, which is regulated by the Act's secondary boycott provisions. By holding that banners, unlike picketing, constitute non-coercive speech, the Board has effectively exempted these types of banners from regulation under the Act.

In another recent case,[15] the Board held that AT&T could not prohibit employees from wearing, while on the job and visiting customers in their homes, t-shirts that said "INMATE #" on the front and "PRISONER OF AT$T" on the back. The Board dismissed the employer's concern that customers would be disturbed by an employee arriving at their home wearing this t-shirt. The Board found that the "totality of the circumstances would make it clear that the technician was one of [AT&T's] employees and not a convict." [16] Member Hayes dissented, arguing that the Board majority "failed to give sufficient weight to the potential for employees wearing these shirts to frighten customers in their own homes and thereby to cause substantial damage to [AT&T's] reputation." [17]

The AT&T case demonstrates that the current Board will allow unions and employees to engage in corporate campaign tactics while they are on the job. This means that employees can work and collect pay from their employer while they are engaged in a form of economic warfare against their employer. Such tactics stand in contrast to the traditional strike, which involves a deliberate withholding of labor (and therefore a foregoing of pay) by employees who wish to protest their wages, hours, or working conditions. For this reason, a corporate campaign is viewed by unions and employees as a superior alternative to a traditional strike because a corporate campaign is effectively a "strike with pay."

In addition to permitting employees to engage in corporate campaign tactics while on the job, the current Board is inclined to permit employees to engage in such tactics while on the employer's property. For instance, in a case arising in the hotel industry, the Board held that off-duty employees of a restaurant company are entitled to distribute handbills while on the hotel's property.[18] Even though the employees were employed by the restaurant company and not the hotel, the Board concluded that the hotel violated the Act when it prohibited the off-duty restaurant employees from distributing handbills to hotel customers while on hotel property.[19]

The Board is currently considering the extent to which non-employee union agents should be permitted to distribute anti-employer literature on the employer's property, even if the union has no labor dispute with that employer.[20] On November 12, 2010, the NLRB solicited briefs on the question of whether the Board should continue to apply its existing precedent, which holds that an employer may not prohibit non-employee union agents from soliciting or distributing literature on its property if the employer allows charitable or civic organizations to solicit on its property.[21] Several federal courts of appeals have criticized the Board's current standard in cases involving non-employee union agents who seek access to an employer's property in order to persuade customers to boycott the employer.[22] It remains to be seen whether the Board will adhere to its precedent despite the contrary views of these federal courts of appeals.

How Does the Boeing Case Fit in to All of This?

The Acting General Counsel's much-publicized decision to prosecute an unfair labor practice complaint against Boeing can be viewed as a corporate campaign tactic in the sense that it involves an effort by the International Association of Machinists and Aerospace Workers (IAM) to obtain an outcome that the union was not able to achieve at the bargaining table.

The complaint alleges that Boeing violated the Act when it decided to locate a second production line for its 787 Dreamliner aircraft at a facility in South Carolina, rather than at its IAM-represented facilities in Washington State and Oregon.[23] The theory of the complaint is that Boeing made this decision in order to retaliate against the IAM-represented employees based on their past strike activity at the Washington State and Oregon facilities.

This complaint will be litigated before an NLRB Administrative Law Judge at a hearing beginning on June 14, 2011. I am not in a position to comment on the issues and allegations that will be litigated at the hearing. I am not privy to any of the evidence that will be presented in the hearing, beyond what has been reported publicly. I will, however, comment on a significant issue that is not going to be litigated in that hearing.

According to the "fact sheet" published on the NLRB's website,[24] the Acting General Counsel decided not to prosecute any allegation that Boeing violated its duty to bargain with the IAM over the decision to locate the second 787 production line in South Carolina. This is because the Board concluded that the IAM "waived its right to bargain on the issue in its collective bargaining agreement with Boeing." [25]

The Board's conclusion that Boeing had the unilateral right, under its collective bargaining agreement, to locate this work in South Carolina is a significant one.

The Board's standard for proving that a union has waived its right to bargain over an issue is an exceedingly high one, requiring proof that the union's waiver was "clear and unmistakable."[26] In other words, the employer and the union must "unequivocally and specifically express their mutual intention to permit unilateral employer action with respect to a particular employment term, notwithstanding the statutory duty to bargain that would otherwise apply."[27] This standard "reflects the Board's policy choice, grounded in the Act, in favor of collective bargaining concerning changes in working conditions that might precipitate labor disputes."[28]

In this case, the Board found that Boeing and the IAM negotiated about Boeing's right to perform work in other locations and "unequivocally and specifically" agreed that Boeing was entitled to make these decisions unilaterally. Boeing exercised that right when it decided to locate the second 787 Dreamliner production line in South Carolina. The Board concluded that Boeing had no further obligation to bargain with the IAM over this decision.

Nonetheless, the Acting General Counsel decided to challenge Boeing's decision as a violation of the NLRA based on a theory of discrimination and retaliation under Section 8(a)(3) and (1) of the Act. If the Acting General Counsel succeeds on this theory, he will ask the Board to order Boeing to move the second 787 production line from South Carolina to the IAM-represented facilities in Oregon and/or Washington State. This remedy, if granted, will override Boeing's collectively bargained right to decide where it wishes to perform this work.

In my view, this prosecution does not advance the core purpose of the Act—promoting industrial peace through the process of collective bargaining. Certainly, the Acting General Counsel has an obligation to protect the rights of employees to engage in strikes and other concerted activity protected by the Act. But this is not a case where the employees are in the vulnerable early stages of an organizing campaign. The Boeing employees have been represented for decades by a powerful and sophisticated union, the IAM. They have a mature collective bargaining relationship, with an agreement that no doubt reflects a series of carefully negotiated compromises over time. By stepping into this dispute, the Acting General Counsel is altering the delicate balance of power and likely undermining the deal that the parties negotiated when the IAM agreed to recognize Boeing's right to determine the location where the additional 787 assembly work will be performed.

For these reasons, the Acting General Counsel's decision to prosecute this case does not serve "the Board's policy choice, grounded in the Act, in favor of collective bargaining concerning changes in working conditions that might precipitate labor disputes."[29] Board litigation can be a distraction from the bargaining process. And because Board litigation often takes years to resolve, it can disrupt labor relations and the expectation of industrial peace during the term of a multi-year collective bargaining agreement.

The Board's job is not an easy one, to be sure. There are important rights and interests on both sides of the table. And in a labor dispute of this magnitude, a breakdown in the collective bargaining relationship can have a profound effect on the national economy. In these circumstances, the aggressive prosecution of unfair labor practice charges may ultimately disrupt, rather than promote, industrial peace. A dispute that might otherwise have been resolved at the bargaining table (and arguably was resolved by virtue of the IAM's waiver in this case) has exploded into an intense public relations campaign as a result of the Acting General Counsel's decision to prosecute. That is an unfortunate and costly result, whatever the outcome of the litigation may be.

This concludes my prepared testimony. Thank you again for the invitation to appear today. I would be happy to answer any questions that Members of the Subcommittee may have.

ENDNOTES

[1] I am not speaking on behalf of Morgan, Lewis & Bockius, the Georgetown University Law Center, or the American Bar Association, and my testimony should not be attributed to any of these organizations. My testimony reflects my own personal views, although I wish to thank Ross H. Friedman and David R. Broderdorf for their efforts in helping me preparing this testimony.

[2] 29 U.S.C. §§ 151 et seq.

[3] Jarol B. Manheim, THE DEATH OF A THOUSAND CUTS: CORPORATE CAMPAIGNS AND THE ATTACK ON THE CORPORATION (2001).

[4] See Cynthia L. Estlund, The Ossification of American Labor Law, 102 COLUM. L. REV. 1527, 1605 (2002).

[5] See id.

[6] See Fibreboard Paper Prods. Corp. v. NLRB, 379 U.S. 203, 211 (1964) ("One of the primary purposes of the Act is to promote the peaceful settlement of industrial disputes by subjecting labor-management controversies to the mediatory influence of negotiation."); Local 24, Int'l Bhd.

of Teamsters v. Oliver, 358 U.S. 283, 295 (1959) ("The goal of federal labor policy, as expressed in the Wagner and Taft-Hartley Acts, is the promotion of collective bargaining * * * and thereby to minimize industrial strife.").

[7] See NLRB v. Insurance Agents' Int'l Union, 361 U.S. 477, 489 (1960) ("The presence of economic weapons in reserve, and their actual exercise on occasion by the parties, is part and parcel of the system that the Wagner and Taft-Hartley Acts have recognized.").

[8] 29 U.S.C. § 158(d)(1) & (4).

[9] 29 U.S.C. § 158(d)(3).

[10] 29 U.S.C. § 185; see also Textile Workers Union v. Lincoln Mills of Alabama, 353 U.S. 448, 455 (1957) (finding that Section 301 "expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way").

[11] Lincoln Mills, 353 U.S. at 454 (quoting S.Rep. No. 105, 80th Cong., 1st Sess., p.16).

[12] See Estlund, supra note 4, at 1603.

[13] See Edward DeBartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 485 U.S. 568, 588 (1988) (holding that union handbills calling for boycott of shopping mall did not constitute a secondary boycott in violation of the NLRA because of potential First Amendment concerns); Linn v. United Plant Guard Workers, 383 U.S. 53, 65 (1966) (holding that employer may pursue defamation action against union only if the defamatory statements were made "with knowledge of their falsity or with reckless disregard of whether they were true or false").

[14] Carpenters Local 1506 (Eliason & Knuth of Arizona, Inc.), 355 NLRB No. 159 (Aug. 27, 2010).

[15] AT&T Connecticut, 356 NLRB No. 118 (March 24, 2011).

[16] Id., slip op. at 1.

[17] Id., slip op. at 3.

[18] New York New York Hotel & Casino, 356 NLRB No. 119 (March 25, 2011).

[19] Member Hayes dissented in this case as well. Id., slip op. at 15-19.

[20] Roundy's Inc, 30-CA-17185.

[21] Sandusky Mall Co., 329 NLRB 618, 622 (1999). If the employer has permitted only a few "isolated" acts of charitable solicitation on its property, the Board might permit the employer to exclude non-employee union agents from its property. Id. at 621.

[22] See, e.g., Salmon Run Shopping Ctr. LLC v. NLRB, 534 F.3d 108, 114 (2d Cir. 2008); Sandusky Mall Co. v. NLRB, 242 F.3d 682, 685-86 (6th Cir. 2001); Be-Lo Stores v. NLRB, 126 F.3d 268, 284 (4th Cir. 1997).

[23] The Boeing Company, Case 19-CA-32431 (April 20, 2011), available at *http://www.nlrb.gov/sites/default/files/documents/443/cpt—19-ca-032431—boeing——4-20-2011—complaint—and—not—hrg.pdf.*

[24] Boeing Complaint Fact Sheet, available at *http://www.nlrb.gov/boeing-complaint-fact-sheet.*

[25] Id.

[26] See Provena St. Joseph Medical Center, 350 NLRB 808, 811 (2007).

[27] Id.

[28] Id.

[29] Provena St. Joseph Medical Center, 350 NLRB at 811.

Chairman ROE. Thank you, Mr. Fritts.

Mr. Andrews, questions?

Mr. ANDREWS. Thank you, Mr. Chairman.

I would like to thank the witnesses for their preparation and their compelling testimony this morning.

Mr. Fritts, thank you for the respect that you showed to the employees and the board members of the NLRB. It is appreciated, and I thought it was very appropriate.

You have accomplished a lot in your career as a lawyer representing parties in labor disputes—right? That is essentially what you do?

Mr. FRITTS. Yes.

Mr. ANDREWS. Let's assume that you were representing an employer in a labor dispute and there was controversy around what the employer did. And let's say that the workers who were contesting things with your client said that your employer was engaging in a systematic campaign to coerce the employees, you know, to avoid their collective bargaining rights. And the committee decided to write you a letter that said, we want to see all of the communications that exist between you and your client, you and that employer, about this alleged coercion campaign.

Would you comply with that request?

Mr. FRITTS. Ranking Member Andrews, there would certainly be attorney-client privilege issues associated with that. But your question raises a policy issue that currently is before the Board——

Mr. ANDREWS. Well, look, my question was, would you comply with the request? Is the answer "no"?

Mr. FRITTS. I would not disclose attorney-client privileged communication.

Mr. ANDREWS. Okay. And the basis of your refusal to disclose that would be what, would be the attorney-client privilege? And could you explain to us why you think that would be an invasion of that privilege?

Mr. FRITTS. Well, to the extent the communications reflected advice of counsel or efforts by me as counsel to prepare for litigation, they would be privileged.

I would also say that to the extent, in preparing for any type of litigation, the employer had collected statements from witnesses, employee witnesses, and there was a promise of confidentiality, that employer would seek to refuse to disclose those statements to the Board or to any third party prior to any litigation, just as the Board——

Mr. ANDREWS. So the basis of your refusal to turn it over would be the attorney-client privilege and I guess what we would call the attorney-work-product privilege?

Mr. FRITTS. Right.

Mr. ANDREWS. I am going to read to you from a letter from this committee to the acting general counsel of the NLRB of May 5th in which the committee directs the acting general counsel to turn over, quote, "all documents and communications between NLRB Region 19," which is where the Boeing complaint originated, "and the NLRB national office addressing the Boeing complaint."

Do you think that that request violates the attorney-client privilege?

Mr. FRITTS. Well, I think, to the extent there is privileged communications, the general counsel might be entitled to withhold those. But I think——

Mr. ANDREWS. Let's examine that extent. If the general counsel has said to the people in the field office, "What material facts might exist that would show a violation of the National Labor Relations Act, and give me your opinion as to whether you think these facts are credible and whether they rise to that level," would that be within the attorney-client privilege?

Mr. FRITTS. Well, I think what you are referring to is what the Board, historically, zealously defends, and those are statements of witnesses who have provided affidavits in the course of investigating the complaint.

Mr. ANDREWS. Right. And do you agree the Board should zealously defend that privilege?

Mr. FRITTS. I agree that they do, and I agree that they should. And I think they also should——

Mr. ANDREWS. So, do you agree that this characterization that I have given in this letter of May 5th would require those communications to be turned over?

Mr. FRITTS. Well, it depends on, I think, the scope of what is in the acting general counsel's file——

Mr. ANDREWS. Well, let's say if there were statements from witnesses that would be material witnesses that were in those documents, you believe they shouldn't be turned over, right?

Mr. FRITTS. I believe that is consistent with the Board's longstanding position. And I think the Board's longstanding position——

Mr. ANDREWS. Okay. I agree with you. I agree with you that this request from the committee was inappropriate.

And I would yield back the balance of my time.

Chairman ROE. I thank the ranking member.

Dr. DesJarlais?

Mr. DESJARLAIS. Thank you, Mr. Chairman.

And thank you to all our witnesses for being here today.

I wanted to start a little bit off-topic and ask if any of you are aware of a draft Executive order that has been brought forth by President Obama requiring companies who contract with the Federal Government to disclose any campaign contributions in advance of receiving a contract. Are any or all of you familiar with that Executive order?

Mr. Bego, yes.

Ms. Fisk, no.

Okay. Well, Mr. Bego, you had mentioned that when the SEIU had come to you that they had asked that you give a list of all your employees and homes and addresses. So you are familiar with the draft Executive order.

And for those of you who are not, it is an order where any company seeking a government contract must supply, in advance of being awarded the contract, disclosure of all financial contributions, not only for themselves but also for their employees.

And we discussed that in the Oversight Committee. And, basically, one of the glaring exemptions was that unions were not required to give the same information.

And I thought, maybe, Ms. Fisk, you would have an opinion on that. But you have no knowledge of that draft Executive order?

Ms. FISK. No, I haven't seen the draft Executive order.

Mr. DESJARLAIS. Okay.

Mr. Bego, you have. Does that particular order bother you in the same way?

Mr. BEGO. Well, I have not had the opportunity to read the whole thing, but I am familiar with it. And I——

Mr. DESJARLAIS. Okay. All right. Well, let me move on.

And as we discussed here already today, that unions use diverse tactics to disrupt an employer's business, including legislation, political/religious appeals, assaulting complaints to regulatory agencies, et cetera, negative publicity campaigns, such as banners and as we spoke of.

How many unfair labor practice charges were filed against your company during SEIU's corporate campaign?

Mr. BEGO. Well, initially, in the first 11 or 12 months, we had 36 them filed against us. By the time it was over, it was close to 50.

Mr. DESJARLAIS. How much did it cost to defend these charges?

Mr. BEGO. Well, just our attorney fees alone were close to a million dollars in defending ourselves.

Mr. DESJARLAIS. And, obviously, that had a great impact on your company?

Mr. BEGO. Well, it did. And the thing is, we are fortunate enough that we could withstand it. The problem is that, today, most employers can't or aren't willing to go through what I call the psychological and financial warfare that these corporate campaigns entail.

And I can tell you categorically that some of the other cleaning contractors that were being attacked in our area gave in because psychologically they couldn't take it, financially they couldn't take it. One case of one contractor I know, it got so bad, his wife told him that, "Look, sign the neutrality agreement. If you don't, I am going to divorce you."

Mr. DESJARLAIS. Okay.

Mr. Karnas, the same line of questioning to you. What tactics did the carpenters use against your company?

Mr. KARNAS. Well, they started with bannering, and they have done a lot of active pickets on job sites. They have gone to our office complex and have picketed in front of our office complex.

During one event, they blocked the ingress and egress to our office property. I had painted the property line with a utility paint in front of the property, and when they came there, they promptly kicked all the utility paint away and violated our private property rights. The next day, we did the same thing, and they also kicked away the paint. There was some minor vandalism.

So my biggest concern is that, the rulings allow bannering but, quite often, they overstep their bounds and they do illegal acts.

Mr. DESJARLAIS. How much did it cost your company?

Mr. KARNAS. Well, it has cost me tens of thousands of dollars in legal fees, and it has cost me in business volume, I would say, probably $100,000 in contracts.

Mr. DESJARLAIS. Any layoffs of employees?

Mr. KARNAS. Well, yes, I have had a tremendous amount of layoffs. I mean, it is in conjunction with the economy as well as the union bannering. I basically have very minimal work in my hometown of Albuquerque.

Mr. DESJARLAIS. All right.

Thank you all.

I am about out of time, so I will go ahead and yield back, Mr. Chairman.

Chairman ROE. Thank you.

Mr. Kucinich?

Mr. KUCINICH. Thank you very much, Mr. Chairman.

In looking at this hearing, which I appreciate the chairman calling, we are really looking at some deeper constitutional questions and questions of labor law, as to whether or not the intention of the National Labor Relation Act can actually be satisfied anymore. Because if you see attempts to destructively undermine the principles underpinning the National Labor Relations Act and to further attack those who are trying to work together to settle their disputes, then you have to ask questions of whether or not the rule of law can prevail when it comes to the insistence, in this case, of certain corporate interests to have their way notwithstanding what the law is.

Case in point, we know that the situation at Boeing, in brief, was a question of unlawful retaliation against union workers and that it was a retaliation for previous strikes. This is what the NLRB essentially found, that a new plant was being located in South Carolina because machinists had gone on strike and Boeing had determined and made no secret that they were going to relocate to South Carolina because of these strikes. However, what Boeing overlooked and what the NLRB determined is that there was a violation of the National Labor Relations Act because of retaliation for protected labor activity. And that is really what we are talking about here: what is protected and what is not protected.

I am not aware, Mr. Chairman, Ranking Member Andrews, I am not aware that Boeing filed a counterclaim here to say that there was a violation on the other side, because the Labor Relations Act gives rights to both parties, as we know.

So we have here at issue whether or not Congress should be intervening even more deeply in this dispute by upending the position of the National Labor Relations Board.

Now, Ms. Fisk, do you see any problems with the violation of due-process rights of workers if a congressional committee goes in and tries to get the work product of the NLRB, which basically made the decision advancing a case saying that there was a violation of the Labor Relations Act which resulted in work being moved out of an area, in a sense, in retaliation?

Is there a question, not just of what the Board's rights are—we got the attorney-client privilege—but is there a question of an undermining of the due-process rights of the workers?

Ms. FISK. Yes, Representative Kucinich, there is.

The Board induces witnesses to testify about the circumstances in a workplace under promises of confidentiality. And the Board stands in the shoes of the individual workers in enforcing their statutory rights.

An individual can't file a lawsuit in Federal court claiming that his rights were violated under the National Labor Relations Act. Only the Board decides which cases to prosecute. And so, when Congress interferes in the Board's processes to try and sway the outcome, it violates the rights of the individual workers that the Board is trying to protect.

Mr. KUCINICH. Thank you very much, Ms. Fisk.

Mr. CHAIRMAn and members of the committee, what we are looking at here is a double violation of workers' rights. On one hand, workers are told that their jobs are going to be moved simply because they took up the right to strike, which is a protected right under the National Labor Relations Act. And there is a further violation by attacking their due-process rights, when, in fact, they have had a decision in their favor at the National Labor Relations Board.

Now, we have to put this in context. The right to strike met a corporate response, which was replacement workers. Corporate campaigns, which were the only other way that unions defending their workers could appeal to the community in which they live—it is a free-speech right—appeal to the community in which they live to look at the corporate conduct and see if this is the kind of

conduct you want to obtain in the community, now that is under attack.

So we have the right to organize under attack, the right to collective bargaining, the right to strike, and the First Amendment right to free speech all under attack here. And we have to look at this in a larger context, because what is happening in this country right now, as you look at the State areas, where unions are under attack at the State level, this is really an attack on free speech, the right to organize, the right to collective bargaining.

I thank the chair for calling this hearing because it gives us a chance to discuss these things. Thank you very much.

Chairman ROE. I thank the gentleman.

Mr. Wilson?

Mr. WILSON. Thank you, Mr. Chairman.

And thank you, witnesses, for being here.

Over the decades, I have had the extraordinary privilege of working in a bipartisan manner, Democrats and Republicans, to recruit industry to South Carolina. We work together—municipal, county, regional, State, Federal—to recruit industry, and we have been very, very successful. But it has become a real shock to the people of our State, our region, the recent attack by the NLRB, a threat to job creation in our State.

I go back—I served on the board of the State Department of Commerce with Governor Jim Edwards to recruit Michelin to South Carolina. We have the North American headquarters of Michelin in South Carolina, five plants across the State, two in the district that I represent. It has been very successful. Just 2 weeks ago, an expansion was announced for Earthmover tires to be developed and built in the district I represent.

We are very grateful that the late Governor Carroll Campbell recruited BMW to locate in South Carolina. It has been phenomenally successful. Every X5, X6, Z3, Z4 in the world is made in South Carolina. In fact, they just announced an expansion of the plant 2 years ago—it has been completed—to increase production from 160,000 cars to 240,000 cars.

Now we have Boeing. I want to give credit to our Secretary of Commerce, Joe Taylor; the chairman of the State Senate Finance Committee, Hugh Leatherman. They worked with Boeing to bring—and it has even been agreed to in Politico today for a new production line. Not moving a line, not moving jobs, it is a new production line, the second line.

Significant portions of 787s are already being made in South Carolina.

It is particularly a shock because just 2 months ago—I was there for the groundbreaking a year and a half—2 months ago, I was there; the building is complete. A million square feet. The American people need to know this building is there. A thousand people have been employed. In fact, they announced 2 months ago solar panels to provide for the energy to be used at that plant be one of the largest investments in the world to produce solar power.

And then out of the blue, the reckless decision by NLRB. It is not a shift of jobs from the Washington State. It is very clear that new jobs have been created in Washington State since this announcement.

With that background, Mr. Fritts, if you could tell us, in 2009, there was 16,000 unfair labor practices filed in our country, and what has been your experience—how many years have you worked in this field and your experience and then what recommendation, or do you have any, for Members of Congress to stop a frivolous complaint?

Mr. FRITTS. In my practice, I try very hard to avoid a client having a charge filed against them, and if the charge is filed, I work very hard to either have it dismissed or settled in some fashion, and the vast majority of unfair labor practice charges filed are ultimately either dismissed and settled in some fashion. But in that process of determining whether a charge has merit through the general counsel's investigation, there is a lot of work that goes into that, a lot of cost for the employer that goes into that, and unfortunately, because of the politicization of the board and the policies of the act and the shift in precedent, an employer can often be in the position of having to defend the charge that is a vehicle for changing the law. And so that is what I try to work to avoid and avoid being in the position of having an unfair labor practice trial.

Mr. WILSON. And I want to congratulate Mr. Bego and Mr. Karnas for surviving.

It was Samuel Gompers, the father of the American labor movement, who indicated the greatest threat for American labor is a failed business. And so I want to thank you for succeeding.

And Mr. Bego, your positive attitude, about $1 million in attorney's fees, as an attorney myself, I am startled that you have such a positive attitude. But I was a real estate attorney, not litigation.

With that, do you have a recommendation to other businesses, either one of you, as to how to face these type of charges.

Mr. BEGO. Well, it is very difficult. Like I said, they filed 36 of them against us and most of them are very, very frivolous. I will give you a couple of real quick. We weren't allowing them to wear union buttons, which we were. We just wouldn't allow them to wear them over our logo because we have to be identified when we are in the buildings at night. But they put them there on purpose so that they get stract from our supervisors that you have got to move them. Then they would go down and file an unfair labor practice that they were told to remove them, which was not the case.

Another one was that one of our supervisors walked—put his hand in the pocket of an employee to get out union information. They do these because they know it is his word against her word or vice versa, and they know it is hard for the company to prove. In most cases, the NLRB will uphold these. So, unfortunately, in those types of cases, the business is spending money to defend themselves.

Mr. WILSON. Again, thank you very much.

Our State is very grateful to have a right-to-work law. Thank you.

Chairman ROE. Thank you.

Mr. Tierney.

Mr. TIERNEY. Thank you very much.

Mr. Bego, in your testimony, you asserted that you had no problem basically with unions. In fact, at one point, you said, well, if you want to have a union, fine.

I see that, but when I look at your Executive Management Services, Inc., employee manual for hourly employees, you make these statements: Indeed, we believe that a union would serve only to hurt our profitability and, thus, our job security. Unions can adversely affect production by narrow work classifications, silly grievances, strikes and inflexibility. It is our positive intention to oppose unionism at every proper and lawful means.

It goes on and on and on that basis. Do you consider that a popular attitude towards unionism?

Mr. BEGO. I don't believe that is our manual, sir, but anyway.

Mr. TIERNEY. We can send it down for you to look at it so, yeah.

Mr. BEGO. Okay. Our intent is to stay nonunion unless our employees come to us.

Mr. TIERNEY. Okay. It is interesting to note that you——

Mr. BEGO. I haven't seen the latest one, okay, that is fine.

Mr. TIERNEY. But you are the CEO?

Mr. BEGO. Yes, I am, sir.

Mr. TIERNEY. You wrote this book as well, "The Devil at My Doorstep," on that, and you mention in your testimony as well. In that book, you contended that the Obama administration was under pressure from the Service Employee International Union, and under that pressure, they weighed in with the National Labor Relations Board's general counsel to urge him to take an appeal of an administration decision that you had won.

What you say is, despite your attorney's belief that the appeal by the NLRB on the union's behalf made no sense, it was not unexpected and very clear to me, in my mind—and I am not a conspiracy theory believer—Stern and the SEIU were introducing their proclaimed persuasion of power via their association with the White House. I believe that the SEIU contacted the Obama administration when they learned of the decision, who in turn made a call to the general counsel of the NLRB in Washington, D.C., and demanded an appeal of the case.

Mr. Bego, were you aware that Ron Meisberg, who was then the NLRB general counsel, was in fact appointed by the Bush administration?

Mr. BEGO. Yes, I am, sir.

Mr. TIERNEY. And you are aware that the Bush administration board had favored generally employers in a lot of different instances, right?

Mr. BEGO. Well, that is true.

Mr. TIERNEY. And you ultimately prevailed in front of the Obama-appointed National Labor Relations Board in June of 2010; isn't that right?

Mr. BEGO. Yes. Are you going to let me answer?

Mr. TIERNEY. Well, I just asked you, was that right, yes or no?

Mr. BEGO. Yes, but I would like to——

Mr. TIERNEY. Okay. And do you believe that that was a fair decision?

Mr. BEGO. We won after going through 2 years——

Mr. TIERNEY. Do you believe it was a fair decision?

Mr. BEGO. We won after 2 years with appeals hearings and waiting on a decision that was appealed. We won the appeals hearing, okay.

Mr. TIERNEY. Do you believe it was fixed?

Mr. BEGO. Which the administrative law judge overwhelmingly found in our favor and said that the union's testimony was contrived and unbelievable, and yet despite that, the National Labor Relations Board appealed the decision——

Mr. TIERNEY. And you won, correct?

Mr. BEGO. And the reason we won——

Mr. TIERNEY. And do you think that in the board deciding that you were correct, that you got a fair resolution by that board?

Mr. BEGO. Only because we kept meticulous records. Most companies can't afford or take the time to do that.

Mr. TIERNEY. Do you think that the fact that the President has the CEO of Boeing on his Export Council in any way means that Boeing has undue influence on National Labor Relations Board decisions?

Mr. BEGO. I have no comment on that. I don't know the situation there.

Mr. TIERNEY. You had a theory here that Andrew Stern——

Mr. BEGO. Well, Andrew Stern had been in the White House at that point about 27 times and we know that——

Mr. TIERNEY. How about Jeffrey Immelt, the CEO of General Electric, who is now on the President's Economic Jobs Council; do you think he has undue influence on National Labor Relations Board decisions?

Mr. BEGO. I wouldn't have any idea.

Mr. TIERNEY. Mr. Fritts, you testified that the company has a right to relocate where it wants, and they had settled that matter on the negotiating table on that issue. But I want to ask, that is correct, right?

Mr. FRITTS. That is the finding of the acting general counsel.

Mr. TIERNEY. Now, Ms. Fisk, do you see any distinction at all between the labor union and the company deciding that it would be the company's right to decide where to locate and a distinguishable issue of whether or not the company can violate the National Labor Relations Act in discriminating in having conduct?

Ms. FISK. Yes. There is a huge distinction. It is common for collective bargaining agreements to give the employer the right to make certain kinds of entrepreneurial or business decisions, but a collective bargaining agreement cannot waive the individual statutory rights of the members of the union to be free from discrimination on the basis of Section 7 rights.

Mr. TIERNEY. Thank you.

I yield back, Mr. Chair.

Chairman ROE. I thank the gentleman.

Mr. Rokita.

Mr. ROKITA. Thank you, Mr. Chairman.

I want to again thank all the witnesses for their time here today and remind them and the audience that the witnesses aren't under trial here today.

This isn't some kind of trial. In fact, the duty of this committee is to have oversight jurisdiction on the NLRB, and each of you are helping in doing that today. So thank you.

Mr. Bego, in light of that, do you want to add anything to your previous answers from questions from Member Tierney?

Mr. BEGO. The fact is, and you know, we have always been an employee-friendly employer. And yes, we have our employee handbook, and we do believe that workers, if given the opportunity to work on their own and their free choice, perform very well under that atmosphere. Now that doesn't mean we are anti-union.

As I said during the introduction, we gave the SEIU many, many opportunities to hold an election. In fact, I took out a half page ad in the "Indianapolis Star," I believe in the summer of 2007, where we asked the union to have an election, and they refused to do it. My guess on that is, is you only need 30 percent to petition for election. I don't think they had anywhere close, and that is probably drawn out by the fact that they finally held a strike against our company in 2008 where they got 10 of our employees out of 400 to go on strike. That is less than 3 percent.

Mr. ROKITA. I will follow up on that point, Mr. Bego. Did the SEIU provide you any evidence that employees of EMS invited them to begin unionization proceedings?

Mr. BEGO. None at all. In fact, I have never received any information on that.

Mr. ROKITA. And then following up on my comment at the beginning of this questioning that we have a constitutional duty on this committee and as Members of Congress to oversee the Federal Government, specifically here the NLRB, and understanding that one of the two primary functions of the NLRB is to prevent and remedy unlawful acts by either employers or unions—so the idea is and as the law that created the NLRB contemplated—that was supposed to be an arbiter, and an unbiased one and given the fact that you must be one of the few people in America that have had this many cases before the NLRB, do you care to comment at all as to whether the NLRB has been a fair arbiter of your cases, and can you give any specific examples?

Mr. BEGO. Well, I believe that, you know, the playing field at this point is unlevel, and I think that is seen in the 36 unfair labor practices they filed against us, initially about 10 or 11 of them were upheld, ones like the buttons and the guy putting his hand in the employee's pocket. And these continued to be upheld until we finally filed 33 unfair labor practices against the SEIU in 1 day.

Mr. ROKITA. That is what I thought; you went on the offensive at one point.

Mr. BEGO. Yeah, and that was the only way for us to have an opportunity. Otherwise, we would have continued to be under assault.

Mr. ROKITA. Thank you.

Mr. Karnas, hearing that testimony, and I couldn't remember, do you—did you have cases before the NLRB?

Mr. KARNAS. I do not, no, sir.

Mr. ROKITA. Okay. Thank you.

Mr. Bego, you spoke of the neutrality agreement which you chose not to sign. Do you know of companies that have chosen to sign these agreements, and if so, can you explain to the committee the outcome once those agreements were in place? You mentioned something about companies that did sign them being sorry. Do you have specific examples?

Mr. BEGO. The interesting thing is that the law firm that represented us during the corporate campaign by the SEIU also represented another company in town. That company did, in fact, sign a neutrality agreement. We did not. We were the only major company that did not. When they sat down for negotiations, we had national companies, regional companies, and companies from the Indianapolis area there, and from what my attorney says, almost to a man, they all wished they would have not signed the neutrality agreement.

Mr. ROKITA. All right.

Mr. Karnas, anything to add to that?

Mr. KARNAS. Just to reflect on, I have tried to always keep an open mind. I would like to see some bipartisanship here in Congress and between unions.

I am a former union member of two unions, household Workers Union 1199 and the International Brotherhood of Laborers. My wife is currently in a teachers union.

So I am not anti-union. I have always tried to keep an open dialogue and conversation with the union members, of course, under the premise or the mandate that the conversations that we have are not to be construed as bargaining agreements, and we try to be very transparent, ethical and honorable.

And what bothers me when I talk to somebody man on man, I have been told multiple times, it is just my job. But it is never just your job to spit upon somebody or to disparage a man or a woman or to threaten their reputation. So I feel that the playing field is unlevel.

Mr. ROKITA. Thank you, Mr. Chairman.

I yield back.

Chairman ROE. I thank the gentleman.

Mr. Holt.

Mr. HOLT. Thank you.

Clearly, these matters that come before the NLRB are complicated matters.

Ms. Fisk, you have stated quite strongly and clearly that workers cannot and should not be penalized for exercising their existing rights, whether they be civil rights or rights, such as on the basis of race or sex, or rights that derive from the NLRA.

And, Mr. Fritts, in your conversation with Mr. Andrews, I think it was established pretty well that it is inappropriate to interfere with the orderly process before an administrative law judge for establishing whether workers have been penalized and whether these are, indeed, established rights.

So, as someone who always tries to simplify things so I can understand them, I would like to get really to the basis for this, and my question is for you, Ms. Fisk. Why are these established? I mean, I go back to the time when the Wagner Act, these protections, were established. These were tough economic times. Clearly, this was not to make it hard for employers. It was not to try to make disadvantageous economic decisions. Why is it important to protect these rights for economic reasons? In your testimony, you talked about preventing a race to the bottom. Could you elaborate on that, please?

Ms. FISK. Yes, of course.

The reason why Congress enacted the National Labor Relations Act in 1935 at the depths of the Great Depression was because Congress found that collective bargaining would improve working conditions, that it would raise labor rates and increase the rates of employment. And that, in fact, proved true.

From the time that the statute was enacted through the 1970s, America enjoyed enormously expanding productivity, a vibrant middle class, and that was made possible and still is sometimes made possible by union representation. Median weekly wages for union workers average $917 a week; that is about $47,000 a year. Median weekly wages in a nonunion workplace, about $800—$700 a week which is about $37,000 a year. Union workplaces are more likely to respect safety protections. These are the kinds of the things that the National Labor Relations Act was enacted.

My brother was trained in a union apprenticeship program as a machinist. He now lives in Arizona, works nonunion, because it is a right-to-work State, and makes less in real terms than he made when he was a young man.

Moreover, last summer he was working in Phoenix, in a shop, with no air conditioning. It was about 125 degrees inside that machine shop on a daily basis. I said to him, why don't you file a complaint with the Occupational Safety and Health Administration? That is unsafe. It is dangerous. They didn't even provide water.

And he said, because I need my job. If I ban together with my coworkers to complain about this or Lord knows if I go down to some government agency, I will get fired like that.

And I said, yes, but then you could file a claim and get your job back.

He said, I can't afford to wait 6 or 8 months and be unemployed. I have to pay my mortgage. I will lose my house.

Mr. HOLT. Well, would you say that in our efforts to ensure that due process is followed, that the administrative law judge is able to operate in a fair and efficient way, still is useful today as it was in yesteryear that you are describing? Is it still true that by providing for good wages and a strong safety record and communications about a company's practices actually benefits the consumer and the economy at large?

Ms. FISK. Of course, because it enables workers to demand their rights to be respected, and it enables consumers to urge companies to respect the legal rights of employees.

Mr. HOLT. Thank you.

Chairman ROE. I thank the gentleman.

Dr. Bucshon.

Mr. BUCSHON. Thank you, Mr. Chairman.

A question for Mr. Karnas. The carpenters, they claim I guess that you didn't provide benefits to your employees. Can you kind of provide a brief overview of what you provided?

Mr. KARNAS. Yes, sir.

We pay about 85 percent of our employees' health and dental plan. We also will pay 100 percent of a life insurance plan. We have a 401(k), a public works pension plan. We have safety training that we pay for.

And Ms. Fisk mentioned safety. We are a member of three OSHA—Federal OSHA partnership programs and our rating for

workmen's comp is a .81, which is a testament to what our safety in our culture—in our company is. So we are very proud of those things.

Mr. BUCSHON. As you should be. How would you think that benefits program compares to other companies in your area?

Mr. KARNAS. Oh, I think it is probably—we set the bar for subcontractors. There might be some general contractors. We are a small company, truly are, 55 employees. I am not trying to be the richest guy in the graveyard. My employees are my family, and we set the bar for subcontractors.

Mr. BUCSHON. Great.

Ms. Fisk, I want to ask you, you were commenting on the 1970s, and I just wanted to give a background. My dad was a United Mine Worker for 37 years. I grew up in that atmosphere. Could you comment on maybe how Federal law has changed and responded to workplace conditions in that—probably I would imagine it is tremendously different now the protections that the government has for workers and everything compared to the 1960s and 1970s. Would you think that there has been a big change in that?

Ms. FISK. Well, let's see, since the 1970s, Congress prohibited discrimination on the basis of disability, but the Occupational Safety and Health Act was enacted in the 1960s. The National Labor Relations Act has not been amended in substance really since the 1950s, except it was applied to the health care industry in 1974. So there has not been huge statutory expansion.

Mr. BUCSHON. I guess my question would be is that, would you think today's work climate—is today's work climate in 2011 significantly different from the 1970s, when my dad was in the United Mine Workers, to enough of an extent where it is difficult to justify this aggressive activity that we have been describing today on behalf of the unions, claiming that there are continuing ongoing safety issues and other unfair practices going on, compared to historically why unions were valuable to our society in the past?

I mean, is there a difference because in my mind, there is a significant difference in our climate, in our country today, compared to when I grew up, when my dad was—and what I experienced when I was a kid.

Ms. FISK. Work still remains difficult and dangerous. Coal mines still have massive explosions, killing dozens of people. I think that——

Mr. BUCSHON. I want to clarify that. Dozens of explosions killing many people. There has been—we had one coal mine explosion, and I know that that is what you are talking about. My dad worked in the coal mine at Peabody Mine No. 10, Pawnee, Illinois, 37 years, didn't lose 1 day for a work-related injury, and during that time frame, they had no explosions, and they had a few injuries based on rooftop problems. So I think you are over generalizing and sensationalizing that particular aspect. I know the coal industry very well.

So what I am trying to get at is, is there ongoing justification for this type of aggressive activity in the workplace against businesses today compared to when unions were, you could argue, very, very necessary in the history of our country? Because, in my view, this type of activity that is overly aggressive, that what goes outside of

people's constitutional rights or what the labor law has in place, isn't necessary.

Ms. FISK. I didn't say dozens of explosions. I said explosions that kill dozens of people. Work still remains dangerous in many sectors. Construction still has high rates of injuries.

Mr. BUCSHON. I have a limited time so I want to ask you this question then. How would what these people are doing impact that? How would that make it better?

Chairman ROE. If you will hold that question. His time has expired.

Mr. BUCSHON. My time has expired.

Chairman ROE. Mr. Hinojosa.

Mr. HINOJOSA. Thank you, Mr. Chairman.

I thank the panelists for coming before our committee, and I would like to make a statement and then ask some questions.

While Congress' oversight of the NLRB is important, I strongly urge my colleagues on this committee to refrain from pointing to the NLRB and refrain from linking them to our Nation's unacceptable unemployment rate.

Instead, we must do what Congressman Rob Andrews said in his opening statement: We must focus on working together to create jobs and provide much-needed relief to American workers.

Dr. Fisk, in your testimony, you indicate that corporate social responsibility campaigns are designed to strengthen the middle class, a goal which the House Committee on Education and Labor in the last 110th Congress endorsed in a pair of congressional hearings which I attended. They were on strengthening America's middle class in 2007. In your opinion, how do corporate social responsibility campaigns accomplish the goal of strengthening the working middle class?

Ms. FISK. Union corporate social responsibility campaigns are designed to provide information to workers, to enable them to assert their rights, in particular, rights to decent wages, to benefits, to safe workplaces, and to consumers so that consumers can choose to patronize those companies that have strong labor practices and safety records and environmental records, and not patronize those companies that have dangerous workplaces or pay low wages. It is information that allows all of us as consumers, as workers, and as citizens to hold companies accountable and to make sure that they treat their workers fairly.

Mr. HINOJOSA. Dr. Fisk, in your testimony, you conclude that the board's recent decisions in the area of labor protests are entirely consistent with the trend in the United States Supreme Court's First Amendment jurisprudence. Can you elaborate on that point?

Ms. FISK. Yes, of course. The United States Supreme Court has recently decided a number of cases protecting rights to picket and protest in various ways. Sometimes people find those protests deeply offensive.

Depending on your point of view, Operation Rescue protests outside of women's health clinics is deeply offensive, but it happens to be constitutionally protected, as the Supreme Court has twice held.

Depending on your point of view, protests at military funerals accusing the death of the serviceperson on America's attitudes with respect to sexual orientation are outrageously offensive, but just

this spring, by an 8-1 vote, the United States Supreme Court held that that kind of protest is constitutionally protected.

In a free society, we have to protect speech that we don't like.

Mr. HINOJOSA. Thank you for that clarification.

My next question is to Chet Karnas, Lone Sun Builders.

In your testimony you state that you fought back against the Carpenters Union by engaging in your own public campaign through presentations to local groups and the press, creating a blog, producing a brochure, and even creating your own banners that said, in part, shame on Carpenters Union; honesty and integrity are the American way; stop the lies.

Do you believe that the First Amendment protects your rights to free speech?

Mr. KARNAS. Yes, I do.

Mr. HINOJOSA. If yes, in your testimony, you state you were disappointed with the board's recent bannering decision because it protected this coercive practice. Do you believe your actions were coercive?

Mr. KARNAS. I do not because I believe the recent decision on Carpenters Union 1506 was on the Carpenters Union, and I consider the Carpenters Union's tactics to be a rogue union with rogue tactics. The AFL-CIO construction unions——

Mr. HINOJOSA. If that is how you feel, did you file a complaint or charge against the NLRB?

Mr. KARNAS. No, sir. Due to the litigation costs and due to counsel—just due to the environment, the business environment, it is not cost-effective. It didn't pass the cost-benefit analysis, and I really thought I had a dialogue with the carpenters' representative. I am very transparent, tried to communicate multiple times. I tried that. I tried to be bipartisan and honest and communicate first.

Mr. HINOJOSA. My time has expired.

Chairman ROE. I thank the gentleman.

Mr. Gowdy.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Fritts, can Boeing factor in South Carolina's financial incentives in their decision to relocate.

Mr. FRITTS. There is certainly nothing unlawful with Boeing considering what financial benefit the State of South Carolina may be willing to provide them, and that will be one of the issues I am sure that they will argue in the hearing.

Mr. GOWDY. You will be doing a pretty sorry job for your shareholders if you didn't factor in the fact that a State was willing to incentivize your relocation there, wouldn't you?

Mr. FRITTS. I would think that is an important business consideration.

Mr. GOWDY. Are you familiar with the case of First National Maintenance Corp. v. NLRB?

Mr. FRITTS. Yes.

Mr. GOWDY. Am I stating this correctly: Congress had no expectation that the elected union representative would become an equal partner in the running of the business enterprise?

Mr. FRITTS. Yes, that is accurate.

Mr. GOWDY. Is that a fair quote from either the holding or dicta in that case?

Mr. FRITTS. Yes, that is an accurate quote.

Mr. GOWDY. All right. So Boeing has to make what is the best decision for them, correct? They can factor in the fact that South Carolina provides financial incentives to locate to that State?

Mr. FRITTS. Yes.

Mr. GOWDY. All right. Is there any evidence that Boeing negotiated in bad faith?

Mr. FRITTS. I don't know what evidence the acting general counsel has or collected——

Mr. GOWDY. That is not part of the complaint.

Mr. FRITTS. But what I do know is the acting general counsel has determined that there was no violation of Boeing's duty to bargain in good faith. They did, in fact, satisfy their duty to bargain with the union by negotiating language in their collective bargaining agreement that gave them the right to place new work wherever they wanted to.

Mr. GOWDY. All right. And this case is going to turn on whether or not it was a new line of work or a transfer of existing work, correct?

Mr. FRITTS. I believe so, but again, I am not privy to all of the evidence that is——

Mr. GOWDY. Are you privy to the fact that Boeing added 2,000 jobs in Washington State even after the transfer of work to North Charleston?

Mr. FRITTS. My understanding is that the work in the Puget Sound area has grown, and that no IAM representative or employee is going to be laid off as a result of this decision.

Mr. GOWDY. Are you familiar with the quote from the spokesperson for the NLRB?

Mr. FRITTS. I am sorry, which quote?

Mr. GOWDY. We are not telling Boeing they can't build planes in South Carolina; we are talking about one specific piece of work, three planes a month. If they keep those three planes a month in Washington, then there is no problem. Beyond the 10 planes, Boeing can build whatever it wants in South Carolina.

Have we gotten to the point where the NLRB is going to tell a company how many widgets or planes or anything else they can build in any particular State? Is that how you read this? The NLRB is going to tell a company precisely the number of a product it can build in a State?

Mr. FRITTS. That is the essence of the complaint, yes.

Mr. GOWDY. Let me ask you about another quote.

Mr. McNerney, who is the CEO of Boeing, said that one of the considerations in where to place the new work was strikes. Is it inappropriate, legally, for him to say that one of the considerations for where they are going to place a new line of work is whether or not they will have a consistent source of labor?

Mr. FRITTS. There is a certain level of candid dialogue that occurs when you have an established bargaining relationship. I know based on what has been reported that there were concerns about customers who were unwilling to tolerate interruption in production.

Mr. GOWDY. Let's be very clear on that because there was a customer who said we are going to have to reevaluate our business re-

lationship with you because of the unpredictability of your work, correct? A customer is threatening to take its work somewhere else because there have been four strikes, correct?

Mr. FRITTS. That is what I understand, yes.

Mr. GOWDY. Am I to be led to believe by the NLRB that that cannot be considered?

Mr. FRITTS. Ultimately, the issue in the case is would Boeing have made this decision for business reasons other than the strike activity of the employees in the plant, and ultimately, that is the issue for the board.

Mr. GOWDY. Well, let me ask you this. Is it okay for him to think it but just not say it? Would he have been fine to just think to himself, we better look for a consistent workforce, instead of saying it? Was that the sin he committed, that he actually said it?

Mr. FRITTS. I think as a result of this case, employers are going to be cautious about what they say publicly about their business decisions.

Mr. GOWDY. Well, my time is almost up. I find it an abomination that you can wear a prison uniform and represent yourself as a prisoner while you are at work, but a CEO of Boeing cannot say we can't survive with these continued work stoppages.

That is an abomination, and I will yield back my time, Mr. Chair.

Chairman ROE. I thank the gentleman.

Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman.

Ms. Fisk, are you aware that our committee has requested documents from the NLRB?

Ms. FISK. Yes, I am.

Mr. SCOTT. Are those documents accessible under the normal discovery process or Freedom of Information?

Ms. FISK. I imagine that documents about pending cases that reflect attorney-client privilege, as Mr. Fritts said, work product, or strategic decisions of the general counsel are not available either through the ordinary board processes or through a FOIA request.

Mr. SCOTT. Can a litigant benefit if the secret internal communications of NLRB are made public?

Ms. FISK. Yes, of course. That is what the Supreme Court held in Hickman v. Taylor in the 1930s.

Mr. SCOTT. Thank you. We have heard a lot of complaints, but do any of the witnesses have legislative recommendations?

Mr. BEGO. As far as unfair labor practices in the corporate campaigns?

Mr. SCOTT. Right.

Mr. BEGO. Well, in our experience with all corporate campaigns run against us. It is called death by a thousand cuts. So not only were they filing unfair labor practices but OSHA complaints, EEOC complaints. We had people in my neighborhood on Halloween trick-or-treating, handing out fliers to people in my company. We had clergy people involved. It goes on and on and on. Daily, you wake up and say, what is next.

One thing I do believe that is necessary is, on the unfair labor practice side, is there has to be some type of loser pay law, that

if people, unions or employers, either one, file complaints that are frivolous and they lose, they need to be held accountable for them.

Mr. SCOTT. Ms. Fisk, is there a prohibition against frivolous claims?

Ms. FISK. Yes, of course.

Well, explicitly in the statute, no, but any adjudicative entity, whether it is a court or the National Labor Relations Act, has a way of dealing with nonmeritorious complaints.

The challenge is protecting the right of people to file claims that later turn out not to be successful with prohibiting complaints that are filed for harassing or other purposes. That is a complicated line to draw for Federal courts. It is a complicated line to draw for an agency.

But as long as we are committed to the constitutional right of people to petition government for redress of grievances, we have to have a regime that allows people to file complaints that turn out, upon investigation, not to be well based either in the fact or the law.

Mr. SCOTT. And are there limitations on freedom of speech as to what legislative response we can have? Ms. Fisk?

Ms. FISK. I am sorry?

Mr. SCOTT. Are there limitations on freedom of speech under the Constitution or right to freedom of speech as to what we can do to some of these complaints?

Ms. FISK. Yes, of course. I mean, you can't defame somebody by standing around in public and shouting falsehoods that harm their reputation unless they are a public figure and you lack malice, but in terms of just filing litigation documents, there is a First Amendment right to make allegations in litigation documents, including allegations of fact that later turn out not to be true.

Chairman ROE. I thank the gentleman.

Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman.

And before I ask the question, I just feel compelled to let off some steam as well.

It is absolutely frustrating to even have to have a hearing like this. I come from Michigan, that led this country into recession, and I am hopeful that we don't ultimately be the last one out.

But the impact of what the NLRB is doing indicates to me and I think it ought to indicate to people of goodwill and belief in what capitalism and what this country is all about, it ought to lead them to fear as well, that what either the bureaucrats and this NLRB board are doing is either out of ignorance of what it takes to move a country forward or it is just malice aforethought, to change this country from what it is, what it has been, what it can be.

Having said that, I thank the panel for being here, and Mr. Bego, I thank you for being here. I see you are from Michigan, that you have operations in Michigan, that you are providing jobs in my State, and I thank you for that, in tough times.

Mr. BEGO. I thank you.

Mr. WALBERG. I come from a county that has a 14 percent unemployment rate still to this day. So jobs are important to us, and I thank you for taking the risk and taking the abuse that I read and I hear is going on here.

You said that it costs about $1 million to defend yourself from the corporate campaign. How many jobs could have been created, to your guesstimate, with that kind of investment?

Mr. BEGO. Forty, 50 jobs or more, and you know, that is the problem when you go into these, and that is why a lot of employers don't fight them because they don't have the resources to do it. We are fortunate we do, that we are big enough, and we stretch across the country, and we can withstand it.

Mr. WALBERG. From a financial and personal standpoint, I say relational standpoint even, in the case of your employees, what kind of a toll did it take on your employees?

Mr. BEGO. Well——

Mr. WALBERG. Marriages, whatever.

Mr. BEGO. It was difficult for everybody, and the ones that I felt the worst for were our cleaners who are out in the buildings because the organizers would be out there at night, waiting for them to come out of the buildings to try and force them to sign union cards while they were doing all the other things to me and my customers. And I saw some of the affidavits that they wrote when we were in the hearing, and it just—I am sorry, I get emotional—it just was appalling what they did to some of our employees.

And then, you know, that is what hurt the most, but the bright spot was is that when I met with the employees, they understood what was going on, and they didn't want any part of what the union had to sell, and that kept me going.

Mr. WALBERG. Well, I appreciate that.

Mr. Karnas, how has the NLRB's September 2010 bannering decision affected your business? And a follow-up question for your consideration, what cost did it have on your businesses and your employees?

Mr. KARNAS. Well, first of all, the bannering decision, September 2010, again, was not endorsed by all the construction trade unions.

In New Mexico, we have the New Mexico Construction Building and Trades Council, and they have had an editorial in our local paper saying that they don't endorse those kind of tactics because those kind of tactics are divisive. It is a visual blight. It is bad for tourism. It is bad for business. It is bad for the construction profession, for its reputation, and it is a job killer, and it is not a job creator by any means.

And I believe that bannering decision was made for the minority of the construction trade groups. Most construction trade groups do not agree with those tactics, and they have openly stated that.

So, again, I believe the Carpenters Union is a rogue union, and I believe their tactics are unethical and reprehensible, and I would like the National Labor Relations Board to take that into consideration and make sure that the bannering decision is enforced. We all have free speech rights, but they have violated those rights every time.

Mr. WALBERG. It is a chilling effect on those rights?

Mr. KARNAS. I am sorry.

Mr. WALBERG. This is a chilling effect on all of those rights, even for a majority of the trades people?

Mr. KARNAS. Yes, and our employees, they have no—after their abhorrent behavior, they are with us 100 percent, and again, we

are not anti-union. You talk about collective bargaining. Our employees are involved in our processes. I mentioned our benefits programs before. On top of our health benefits, we also include an has for employee savings accounts when they have the larger deductibles, and this is all from employee input. And we have a lot of buy in, but it has had a chilling effect on our employees. There has been some fear of some safety, some threats. Of course, even the threats have been loud, and so we have had a negative impact, but we continue on. I think we are closer for it, and we still keep an open mind, and we wish to have dialogue.

Mr. WALBERG. I thank you, and Mr. Chairman, I thank you for the time and I also thank you for letting the time go so we could hear that employees get it, in many cases, even though their leadership doesn't.

Chairman ROE. Mr. Miller.

Mr. MILLER. Thank you, Mr. Chairman.

Mr. Fritts, in your submitted testimony, you suggested that in the discussions about the movement of the plant, that the employees had waived their right to Boeing making this decision?

Mr. FRITTS. That is what the acting general counsel found.

Mr. MILLER. And Ms. Fisk, in your statement, I think in responding to Mr. Andrews you suggested that that may be so, but they did not waive their rights against being discriminated against under the law?

Ms. FISK. That is correct.

Mr. MILLER. And that would be what right?

Ms. FISK. The right under Section 8(a)(3) of the NLRA to be free from discrimination in regard to having exercised statutory rights.

Mr. MILLER. So when various officers and the CEO of Boeing make a series of public statements that they made this decision and will continue to make these decisions because of the strikes at the Washington facility, one of the units of the Washington facility, what choice does the general counsel have here given that retaliatory actions against legal union activities are prohibited under the law?

Ms. FISK. The general counsel is appointed to enforce the National Labor Relations Act. It is important to distinguish that there may not have been a violation under 8(a)(5), which imposes a duty to bargain, but that has nothing to do with whether there was a violation under Section 8(a)(3) of the statute, which prohibits discrimination in regard to union activity.

Mr. MILLER. So if Boeing, if these same corporate officers had said, well, we are going to move our planet because there are too many African-Americans in Seattle, would those African-American workers have lost their right because Boeing and the machinists decided that they could move this facility prior to the knowledge of that reason?

Ms. FISK. Of course not. The African-Americans have rights under Title VII of the Civil Rights Act of 1964, as does everybody, to be free from discrimination in regards to race as companies make decisions about how to run their operations.

Mr. MILLER. And to date, we have this complaint—we haven't heard from the administrative law judge yet, correct?

Ms. FISK. That is correct. We have no idea what the evidence is ultimately going to show about why Boeing decided to move its operations.

Mr. MILLER. You don't know whether or not the board will agree with that finding or whether it will be appealed to the board or whether the board will disagree with that finding; is that not correct?

Ms. FISK. That is correct.

Mr. MILLER. And we don't know in fact whether that will be appealed?

Ms. FISK. That is correct.

Mr. MILLER. But the allegation here is that this decision was based in part on an illegal activity?

Ms. FISK. That is correct. It is an allegation based on the board's investigation of the facts, but those facts have not been proven.

Mr. MILLER. So the idea that somehow this decision—I find it rather ironic that we would say that this decision somehow is going to change America for what it could be, when, in fact, what you have is the protection of rights of workers, under the law, clearly stated. You have on videotape comments by these individuals saying that that is the reason why they are continuing to move the facility or move the facility, and the question is whether or not the law will be allowed to work or whether this committee and the oversight committee will be able to reach in and tamper and interfere with that process, which is essentially a judicial process.

Ms. FISK. That is correct.

Mr. MILLER. Have you ever asked—Mr. Fritts, have you ever asked the Congress to defund a case against one of your clients?

Mr. FRITTS. I am not a lobbyist. I am a lawyer.

Mr. MILLER. No, I am just asking as a lawyer. This is one of the tools that is in apparently now available if you come to the Congress and ask them to defund the agency bringing the case, prior to any little bit of, you know, presentation of evidence.

Mr. FRITTS. Congressman, all I can tell you is my client's pay me to litigate cases. They don't pay me to lobby.

Mr. MILLER. It is not a question of lobbying. It is a question of whether or not you think that is a proper tool.

Mr. FRITTS. I am not here to comment on what is appropriate for Congress or for the purposes of congressional oversight. I am here to testify about the National Labor Relations Act and practice before the board.

Mr. MILLER. Ms. Fisk, you also state in your testimony that, in fact, the Supreme Court has found the board to be too restrictive on the issues of free speech in union campaigns; is that accurate?

Ms. FISK. That is correct.

Mr. MILLER. It wasn't on initiation by the board. In fact, the board was going the other direction until the Supreme Court spoke.

Ms. FISK. It wasn't the Supreme Court. It was the Federal Courts of Appeals. What happens is the board interprets the statute one way and then tries to get enforcement, either by going into a district court to get an injunction or it issues a decision, and then one of the parties appeals it or seeks review in the Federal Courts of Appeals. And the board was losing its cases in which it was holding that bannering is coercive, and ultimately, therefore, the board

decided that it had to change its position because the Federal Courts of Appeals, including the D.C. Circuit in the Sheet Metal Workers case, in an opinion by Chief Judge Douglas Ginsburg, who is nobody's liberal, found that bannering is protected by the First Amendment.

Chairman ROE. The gentleman's time has expired.

Mr. Kline.

Mr. KLINE. Thank you, Mr. Chairman.

Thank you to the panel for being here.

Mr. Fritts, earlier in the discussion today, there were questions raised regarding attorney-client privilege. In inquiries that this committee has made of the National Labor Relations Board, I have got to admit up front I am not an attorney, but it is my understanding that attorney-client privilege is not an absolute, that in some circumstances, the parties can be compelled to provide information. Is that correct?

Mr. FRITTS. That is correct. Certainly——

Mr. KLINE. Thank you. More to the point raised earlier, this committee is authorized, indeed obligated, to conduct oversight of the agencies and entities within its purview and the actions those agencies and entities take. And that is an obligation that we take seriously.

And I would point out that both parties have taken this obligation seriously. It is fundamental, fundamental to the role of Congress.

I want to be clear that inquiries this committee has made of the NLRB have been made in connection with our authority and obligation to conduct congressional oversight, and that authority has been exercised consistent with House Rules.

Now, would you say, Mr. Fritts, that if there are concerns regarding the information requested, wouldn't you agree that it would fall to Congress and the board to discuss and resolve any disagreement over what can be produced consistent with congressional responsibilities and rules?

Mr. FRITTS. I agree.

Chairman KLINE. Thank you.

We have had this discussion back and forth many times, the members of this committee. Oversight is a tough business. With the National Labor Relations Board, it is absolutely indisputable—and I am ready to argue with anybody here—that the nature, and I would argue, the bias, of that board shifts. Typically when it is a Republican administration, the Democrats claim that workers' rights are being denied and it is too pro-business. And when it is a Democrat's administration, Republicans complain. When it is a Republican administration, this committee has called for hearings and brought board members here to testify, and I have complained about it, and now in this administration, I think we have an outrageous overreach of the board, and I am doing what I can do to provide the oversight to that board.

It is very powerful. It is powerful beyond what we imagined that it could be, and we need to exercise checks and balances that the legislative branch, Congress, and the executive branch and this board to watch for overreach both ways.

So I would just say to my colleagues, to the panel, and to those here in the room that we are going to continue to exercise our authority as both parties have done and provide oversight to this board and to all agencies and departments in the executive branch.

I yield back.

Chairman ROE. I thank the gentleman for yielding. I will now exercise my time for questions, and I would start out by saying that—well, first of all, Mr. Bego and Mr. Karnas, thank goodness there are people like you out there who have the deep pockets, and you, Mr. Karnas, are a very small business, and I am very familiar with the backbone to not be intimidated. And I think you are absolutely right. I grew up in union households.

As a matter of fact, I have also belonged to a union, and I think it is inherent on all of us to allow and make sure that workers are treated properly and make sure that employers are treated properly.

Jobs are the single most important because, as Mr. Andrews brought up in the very beginning, and I have got a news flash for you. We don't have an income tax from Tennessee. We are a right-to-work State, and we would love to have your business. That is the way our Governor feels, and that is the way I feel about this.

When you see a company like Boeing, a great company—I have been through part of their company in Washington State, great employees. That business competes around the world, and they have a lot of factors. Part of it is labor, a huge part, and any business—I heard both of you all say that. And absolutely, I am aware of it myself. The most important person in my shop are my employees, who work with me every day. They didn't work for me. They worked with me in a small business.

And Mr. Karnas, I heard you say that, too. You are very proud of your people.

And the same thing, Mr. Bego.

And I would like to know why in the world in American business, we have got jobs going overseas, and you see losing jobs and jobs and especially our manufacturing jobs, why in the world we would have a situation where you could go to a non—a shop or an employer who is not even involved in a conflict, a discussion, and have someone show up with a rat out there as an inflatable rat or a banner, how that creates a job or helps a worker. I am sort of slow, but I don't understand that.

And the other thing I can't understand is, when you have a business—Mr. Bego, I want you to speak to this—is when you have a business out there, and you have hundreds or you, in case, thousands of employees, who haven't asked for a union, no one in your shop asks, and if you want to have a vote, that is the way America votes. You have an election. We now have a process for that, but these corporate campaigns are a way to avoid any pain on the side of the person asking for it completely, and you used the same tactics as you can with a strike, except you don't feel, as Mr. Fritts pointed out, the pain of losing your paycheck.

So, in your case, you didn't have anyone asking for a union. They stepped in to ask, and then you went through essentially $1 million worth of litigation to protect yourself from something you didn't ask for or your employees asked for. Can you speak to that?

Mr. BEGO. Well, that is correct, and I think people have to understand what a corporate campaign is versus what is going on with Boeing right now.

In a corporate campaign, the union, as I said before, has come in and looked at as a business model. And in our case, they came went out to about 10 janitorial firms in the Midwest, okay. And the thing about this is, if they could follow the law, the National Labor Relations Act, and get 30 percent of the people to sign cards, they could petition for an election. They didn't do that. My guess is because they couldn't get enough people to sign the cards.

So what they did then is start this campaign that would force unionize my people, and I said, no, because it wasn't right for my people.

And it continues, and the board today is trying to promulgate rules that will help them process these corporate campaigns easier, and one simple example real quick is, they are trying to get one where you have to post the National Labor Relations Act, specifically the part of it that says you can unionize. Sounds good, but they also want to attach fines to it, like $10,000 every time you are found guilty of not posting.

That is not the real goal. The real goal is, is not to inform the people. The real goal is they go in. They don't have it up. The organizer goes back to the union hall, and he says, we will file an unfair labor practice. All of the sudden, the business has two or three of those sitting there, and the union comes in and says, I can make your pain go away; here is what I will do. You sign this neutrality agreement, we will withdraw the charges. And they have got what they want because now they have got card check; they have got the people's home addresses and their names. That is what the game is.

Chairman ROE. I am going to ask Mr. Fritts very quickly, is a private employer subject to oversight by a Member of Congress?

Mr. FRITTS. Is it proper——

Chairman ROE. Private citizen, they are not. We are not.

Mr. FRITTS. No.

Chairman ROE. And is a private employer subject to the oversight of this committee?

Mr. FRITTS. I am not an expert on oversight.

Chairman ROE. The answer is no, and is a private employer subject to oversight of this Congress?

Mr. FRITTS. I assume not, no.

Chairman ROE. Well, is the National Labor Relations Board subject to oversight by this Congress?

Mr. FRITTS. Yes.

Chairman ROE. And by this committee?

Mr. FRITTS. Yes.

Chairman ROE. I think that is the point Mr. Kline was trying to make. My time has expired.

Any closing statements from the ranking member.

Mr. ANDREWS. Yes. I would like to again thank the witnesses and our colleagues for what I think was a very interesting and instructive exchange.

I think the record of the hearing establishes four propositions: The first is that in a boisterous and exuberant democracy, when

people express their opinions, sometimes people are troubled and find them offensive. I hope we always find opinions offensive because that means people are free to speak their minds.

The second proposition established is that the Boeing decision is very controversial and hasn't been decided yet. So I guess we are a little ahead of our time in that regard that we are discussing a decision that hasn't been made yet, and someday it will be made, and we will assess the impact of it.

The third proposition I think is clearly established is that asking the general counsel of the National Labor Relations Board for his work product and his privileged communications with his client in a pending matter or any matter is wrong and should not have been done.

And the fourth proposition is that this is yet another example of how we could have focused on the issue of creating an environment where businesses and entrepreneurs could actually address the number one problem in this country, which is creating jobs, instead of talking about cases that haven't been decided, asking people for information to which we are not entitled, and sort of remarking on the fact that in a free speech democracy, people sometimes say things that offend other people.

I appreciate—I think the witnesses did contribute in a meaningful and important way, and I appreciate their time and their preparation, but I would, frankly, again urge that the committee refocus our attention on the number one issue that we hear about in our district, which is working together to create jobs for the American people.

I yield back.

Chairman ROE. I thank the gentleman.

I agree with the gentleman that jobs are the single biggest issue facing this country right now. I went back and reviewed all of the recessions that have occurred, major recessions that have occurred since 1945, and all—the four steepest ones when we have come out of recession—and this is essentially 13 months past that time—we have come out, the GDP, about 7 percent higher than we went in and jobs about 4 percent, 4.7 percent higher than when we went in. So we came out pretty steep after the deepest recessions.

And the two I remember, the first was 1973. I was in the Army and Korea, and I got heat 3 hours a day. People here stood in gas lines in this country. In 1981, we had a very steep recession, and the same thing occurred then. This particular recession, our GDP is up about a 10th of a percent. That is why when you ask people, is this recession over—go ask when you get home to your constituents, is this recession over, and no one will raise their hand. And the reason is because they can't find a job, and the reason they can't find a job is that our job creation is 5 percent lower than where it was. We are 7 million jobs below when we started this recession.

And for the life of me, I am trying to figure out how harassing Mr. Bego for 3 years when he said it cost him $1 million and he could have created potentially 20, 30, 40, 50 jobs, how that helps with job creation, and that is my situation here and my concern here, I mean. I think certainly workers need to be protected, no

doubt. I put on a uniform and left this country so that you would have a right to a secret ballot.

My wife claims she voted for me in the election, but I don't know that for sure because it is a secret ballot, and that is the way it should be. The President is elected that way. The Congress is elected that way. The union members are elected that way. And that is exactly the right we want to protect.

And I think you all so much for coming today. It was a great hearing. You all did a wonderful job. Without any further comments, this meeting is adjourned.

[Additional submissions of Chairman Roe follow:]

Prepared Statement of Bill Ritsema, President, Ritsema Associates

CHAIRMAN ROE, RANKING MEMBER ANDREWS AND MEMBERS OF THE SUBCOMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS: Thank you for the opportunity to submit my testimony today to your subcommittee. My company has been adversely impacted by the Michigan Regional Council of Carpenters (MRCC) union as they have singled-out our small business for no concrete reason and use methods such as letters, picket lines and "bannering" at several of our high profile job sites. Congress needs to put an end to the currently allowed harassment practices on small businesses that are based on no merit.

My name is Bill Ritsema, and I am the President of Ritsema Associates which is a second generation merit shop specialty contractor that has been in business since 1955. We are a family owned business that has a strong reputation in Michigan for providing a quality product and providing quality benefits and pay to our employees.

On July 13, 2010, we received a letter that stated the carpenters' union had investigated our wages and benefits and deemed that they were lower than the area standard. Coincidentally, our business did not provide them with any wage and benefit information nor have our employees submitted a survey to them directly. They are attempting to blackmail us into providing them with proprietary information intended to be used for their own benefit with the threat of harassment to our customers and business. They requested that we fill out our wage structure and send it back to them within seven days. See exhibit 1. Instead of filling out their forms, we sent them a response letter on July 23, 2010 asking to see the results from their investigation of our wages and benefits. See exhibit 2. Interestingly, they did not send us the results of their investigation of our own wages and benefits.

To date, the union has no recorded complaint filed with the National Labor Relations Board (NLRB). However, the union began a harassment campaign by sending letters to more than one dozen of Ritsema Associates' customers claiming a "Notice of Labor Dispute." The letter requests of customers, "[W]e are asking that you use your managerial direction to not allow these non area standard contractors to perform any work on any of your projects unless and until they generally meet area labor standards for all their carpentry craft work." The MRCC is attempting to remove our carpenters off the job site even though they do not represent our carpenters or have legitimate cause. While this was couched as a request from the MRCC, the union also informed the customers that there would be adverse impacts if they continued using the employees of Ritsema Associates. "We want you to be aware that our new and aggressive public information campaign against this company will unfortunately impact all parties associated with projects where they are employed," the notice warns. The impact is defined as "highly visible" banner displays and "distribution of handbills" at the job sites of Ritsema Associates' customers. Shortly thereafter, large banner displays manned by teams of demonstrators did begin to appear outside of several job sites where employees of Ritsema Associates were working.

When asked, the banner holders denied being employed by Ritsema Associates, the customer or any of the other contractors on the job site. They stated that they were not carpenters and not members of the MRCC union. They would only state that they had been hired by the MRCC to "hold the banner." Additionally, video interviews done by the Mackinac Center for Public Policy confirm that the union hired homeless individuals from a shelter in downtown Grand Rapids. Committee members can view the videos at the following web addresses:

http://www.youtube.com/watch?v=JUwy_Ot1d4I and
http://www.youtube.com/watch?v=Ndb_xGkZY5w

The union has been "bannering" and picketing many of our construction sites claiming that we do not pay the area standard wages, health benefits and pension to all of our employees. What they say on our job sites essentially mirrors what their letters say and are patently false. The union was actually picketing right outside a cancer center where cancer patients were resting and, according to the hospital's lawyer, were doing so illegally.

The MRCC has also sent letter to our customers' clients that are filled with lies, approximately 60 letters have been sent. See exhibit 3 (Standard letter). Nearly every statement they claim as a fact is in reality fiction. Additionally, Kathy Hoekstra from the Mackinac Center for Public Policy has a union representative on video accusing us of hiring illegal aliens, which is also false.

Customers have stopped using Ritsema Associates in order to make the MRCC demonstrations stop. Demonstrations that are unfounded and based on no proof. To be clear, I have never spoken with anyone from the MRCC union. The dispute that they have with our small business is based on ulterior motivations rather than facts.

Congress needs a legislative solution to stop the currently legal practice of harassment and lies. These current practices allowable by the National Labor Relations Board (NLRB) are destroying business and have given the unions the right to harass good long-standing companies such as our own.

Ritsema Associates pays a superior package of wages and benefits to our employees. We are also very competitive and, accordingly, are able to provide the kind of job security that allows our employees to earn fair wages and benefits on a consistent basis. We provide our employees with a quality benefit package that includes a financially sound health plan and a 401(k) plan where every dollar that goes in belongs to our employees. Our company and customers have been needlessly harmed by the acts of harassment by the Michigan Regional Council of Carpenters. These acts have no merit or basis other than to damage our reputation and therefore harm our workers.

MICHIGAN REGIONAL COUNCIL OF CARPENTERS

2310 W. Washtenaw · Lansing · Michigan 48917

Phone 1-877-974-2538 · Fax (517) 484-6303

07-13-10

VIA Certified Mail – #7009 2250 0003 3114 6306

Ritsema and Associates
3000 Dormax
Grandville, MI 49418

Dear Sirs,

We have investigated the wages and benefits, which your employees receive. Based on our investigation, we have concluded the wages and fringe benefits paid to your employees performing the following type(s) of work, Carpentry and Construction Labor, is less than the established area standard. Your substandard wages and fringe benefits to employees performing the aforementioned type of work is undermining the fair construction wage and benefits standards established by the Michigan Regional Council of Carpenters and reducing the employment opportunities of these individuals who receive a fair construction wage and benefits for similar work performed.

This letter, nor any of our publicity activities is intended to be, or should be construed as a request that your company enter into a collective bargaining agreement, or that you employ or refuse to employ any individual or group of individuals. Nor do we intend to interfere with the rights of your employees to work without becoming members of the Union.

If you believe the current wage and fringe benefits paid to your employees performing Carpentry and Construction Laborers meets or exceeds the area standards established, please respond to the questionnaire, which is attached to this letter.

Indicate the current wages and fringe benefits paid to the employees performing this type of work.

In the event that your company increases its wages and/or fringe benefits in the future, please advise us immediately so we can review this information and determine whether your company is still paying substandard wages and fringe benefits. By seeking the requested information, the Union is not asking or demanding that you comply with or meet the terms of its collective bargaining agreement. We are only wishing to ascertain whether your total labor costs meet the area standards.

Please provide the requested information within seven (7) days of the date your receive this letter. In the event that you do not provide the requested information within that time, we will assume that our information is current and that you are, in fact, paying substandard wages and benefits.

Sincerely,

Tyler McCastle
Representative

RECEIVED
JUL 14 2010

_____.
Name of Employer

Please respond to the following questions for your employees performing the following type(s) of work _____

by indicating the current wages and benefits paid:

Private Sector Construction Projects:

Foreman –
Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or $_____ per month
Employer Paid Pension contributions $_____ per hour or $_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

Journeyman –
Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or $_____ per month.
Employer Paid Pension contributions $_____ per hour or $_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

First Year Apprentice -
Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or $_____ per month.
Employer Paid Pension contributions $_____ per hour or $_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

Second Year Apprentice –

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or $_____ per month.
Employer Paid Pension contributions $_____ per hour or $_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

Third Year Apprentice -

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or $_____ per month.
Employer Paid Pension contributions $_____ per hour or $_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

Fourth Year Apprentice -

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or $_____ per month.
Employer Paid Pension contributions $_____ per hour or $_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

<u>Public Sector Construction Projects:</u>

Foreman -

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or $_____ per month.
Employer Paid Pension contributions $_____ per hour or

$_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per
Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

Journeyman -

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or
$_____ per month.
Employer Paid Pension contributions $_____ per hour or
$_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per
Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

First Year Apprentice –

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or
$_____ per month.
Employer Paid Pension contributions $_____ per hour or
$_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per
Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

Second Year Apprentice -

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or
$_____ per month.
Employer Paid Pension contributions $_____ per hour or
$_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per
Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

Third Year Apprentice -

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or
$_____ per month.

Employer Paid Pension contributions $_____ per hour or
$_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per
Hour or $_____ per month

Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

Fourth Year Apprentice -

Hourly Wage $_____ or Monthly Salary $_____
Employer Paid Health Insurance benefits $_____ per hour or
$_____ per month.
Employer Paid Pension contributions $_____ per hour or
$_____ per month
Employer Paid Apprenticeship/Training benefits $_____ per
Hour or $_____ per month
Paid Vacation _____ days per year
Paid Holidays _____ days per year
Other fringe benefits (describe benefit and cost) _____
_____.

I certify the information set forth above is true and accurate.

_____,
Signature

_____,
Please Print

_____,
Title

RITSEMA ASSOCIATES
INTERIORS CONTRACTOR

3000 DORMAX S.W.
GRANDVILLE, MICHIGAN 49418
PHONE (616) 538-0120
FAX (616) 538-9695

July 23, 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Tyler McCastle
Representative
Michigan Regional Council of Carpenters
2310 W. Washtenaw
Lansing, MI 48917

Dear Mr. McCastle:

This letter is sent in response to your letter received July 16, 2010.

Please be advised that we provide a superior package of wages and fringe benefits to our employees. We are also very competitive and, accordingly, are able to provide the kind of job security that allows our employees to earn fair wages and benefits on a consistent basis.

In your letter, you state:

> We have investigated the wages and benefits, which your employees receive. Based on our investigation, we have concluded the wages and fringe benefits paid to your employees performing the following type(s) of work, Carpentry and Construction Labor, is less than the established area standard.

As noted above, such "investigation" is clearly flawed. Please provide a copy of the results of your "investigation" within seven (7) days of the date you receive this letter. In the event that you do not provide the requested information within that time, we will assume that you performed no proper investigation or that your investigation did not demonstrate that our employees were paid "substandard wages and fringe benefits."

You also state that we are "undermining the fair construction wage and benefits standards established by the Michigan Council of Carpenters." Our understanding is that these "benefits" include a defined benefit pension plan that is grossly underfunded and declared to be in "Critical Status" under the law. (Note, "Critical Status" is even worse than "Endangered Status".) We also understand that the Carpenters' health plan may be under similar financial stress, with the result that more and more of the Carpenters' wage earning opportunities are being diverted to bail out these expensive and financially troubled "benefits."

By contrast, we provide our employees with a quality benefit package that includes a financially sound health plan and a 401(k) where every dollar that goes in belongs to our employees – clearly a superior benefit package. If you disagree with this analysis, please provide copies of your pension and health and welfare plans, together with the latest actuarial and financial reports and any documents relevant to the "critical" funding status of your pension plan. If this information is not provided within seven (7) days of the date you receive this letter, we will assume that you agree that the Carpenters' benefits are "substandard."

In summary, our company does not pay "substandard" wages and benefits. We in fact provide a superior wage and benefit package to our employees. We also provide them with consistent work opportunities so they can fully benefit from our superior wage/benefit package. Publishing any information to the contrary would be false and defamatory. We will refer any such publication to our legal counsel for action.

Sincerely,

Mr. W. Ritsema

President

Ritsema Associates

MICHIGAN REGIONAL COUNCIL OF CARPENTERS

2310 W. Washtenaw · Lansing · Michigan 48917

Phone 1-877-974-2538 · Fax (517) 484-6303

7-27-10

VIA CERTIFIED MAIL

NOTICE OF LABOR DISPUTE: RITSEMA & ASSOCIATES
MONTAGUE AREA PUBLIC SCHOOLS
4882 STANTON BLVD
MONTAGUE, MI 49437
ATTN: DAVID SIPKA, SUPERINTENDENT

Dear Mr. Sipka:

It has come to our attention that Ritsema & Associates is performing work on one or more of your projects. Please be informed that The Michigan Regional Council of Carpenters has a labor dispute with Ritsema & Associates, who does not meet area labor standards – they do not pay the standard wages to all their employees, including paying for health benefits and pension.

The Michigan Regional Council of Carpenters has made a solid commitment of personnel and resources to protect and preserve area standard wages, including providing or making payments for family health care and a dignified retirement for all area carpentry craft workers. Therefore, we are asking that you use your managerial discretion to not allow these non area standard contractors to perform any work on any of your projects unless and until they generally meet area labor standards for all their carpentry craft work.

We want you to be aware that our new and aggressive public information campaign against this company will unfortunately impact all parties associated with projects where they are employed. The campaign will include highly visible lawful banner displays and distribution of handbills at the jobsite and premises of property owners, developers, general contractors, and any other firms involved with projects involving a non area standard contractor. We certainly prefer to work cooperatively with all involved parties rather than to have an adversarial relationship with them but cannot sit idly by while these entities condone and/or support the non-area standards contractor.

If you agree to comply with the request we have made in this letter, or if our information about a non area standard contractor being involved with any of your projects is incorrect, please call the undersigned immediately at 1-877-974-2538. Doing so will provide the greatest protection against your firm becoming publicly involved in this dispute through misunderstanding or error.

Sincerely,

Todd McCastle
Representative

c.c. Ritsema & Associates
Triangle Associates, Inc.

[Additional submissions of Mr. Andrews follow:]

The Cincinnati Post
Tuesday, July 31, 2007

Justice for janitors

Greater Cincinnati janitors ratified a contract over the weekend that will boost pay and provide access to health care benefits over the next five years. We regard the agreement as significant - and as good news.

The contract was negotiated over the past five months between the region's eight largest cleaning companies and the Service Employees International Union. Officials with the union, which in 2005 broke away from the AFL-CIO, said the contract covers janitorial workers in about two-thirds of all office buildings in Greater Cincinnati.

The contract is significant in several respects:

It marks the first time that janitorial employees of independent cleaning companies in Greater Cincinnati have been represented by a union. (Some employers hire building maintenance and cleaning workers directly, and some of them are represented by unions.)

It marks an expansion into the heartland of an organizing effort that has been underway for more than two decades. The SEIU's "Justice for Janitors" campaign initially focused on larger cities, many on the East and West coasts or larger inland cities such as Chicago. Cincinnati is now the 27th urban area whose janitors have been organized by the SEIU; negotiations are currently underway in Columbus and Indianapolis.

The contract was negotiated in a fairly amicable way. Talks began in March. On July 14 workers authorized the union to call a strike if a tentative contract couldn't be reached. The final agreement came together after three days of intense negotiations last week.

We regard the contract as good news largely because it will improve the quality of life for people who deserve it.

The agreement calls for wages to rise to a minimum of $7.05 by Oct. 1, 2007 and to $9.80 an hour by Jan. 1, 2012. That still isn't a lot of money (by way of comparison, the federal minimum wage, now $5.85 an hour, will rise to $7.25 in mid-2009), but it represents progress for workers who today are sometimes earning as little as $6.85 an hour.

Within three years, the pact will also give workers the opportunity to work at least seven hours per shift. Now, many companies limit janitors to four or five hours per shift, typically starting in early evening. (Hence, many janitors now work at two or more part-time jobs.) This contract will give janitors six paid holidays a year and the ability to accrue paid vacation time. For some, this will mark their first time ever to get paid time off from work.

Finally, and perhaps most importantly, the contract gives janitors access to employer-subsidized group health insurance starting Jan. 1, 2010. The cost will start at $20 a month for those in a single plan and rise to as much as $198 a month for the most expensive family plan.

In a more perfect world, workers would not have to join a labor union to secure access to affordable health care. But until Congress finds enough backbone to step up and address the issue in a meaningful way, it's hard to fault the approach taken by janitors here and across the country.

Beyond health care, we think the new contract is important for what it says about the value of work.

The American ideal has historically been to reward an honest day's work with fair compensation - enough, certainly, to support a decent standard of living. That ideal was implicit in the most recent round of welfare reform legislation nationally and in the states. But for many, taking a job and going off welfare resulted in an economic loss because health care, housing and other benefits were cut off.

The people who clean our buildings do work that is often hard, frequently unpleasant and always necessary - and at hours when most other workers are home with their families. If nothing else, the new janitors' contract in Cincinnati places a higher value on such work. That, we believe, is fair.

Indianapolis Star
April 20, 2008
Tom Spalding

Pay and hours improve for Indianapolis janitors

Janitors in Indianapolis will see wage increases and more consistent work hours as part of a new contract ratified Saturday.

Affordable health insurance and paid holidays and vacation time are also part of the four-year deal. Their representative, Service Employees International Union, did not disclose the vote total but said it was 100 percent in favor.

The union Friday had reached a tentative labor agreement with American Building Maintenance, Group Services France, Mitch Murch Maintenance Methods, Sommers Building Maintenance and Bulldog. That ended a three-year campaign to improve their work conditions. Negotiations began in February.

"More than anything, we feel a large sense of pride having accomplished what we accomplished in the past three years," said Leticia Corona, 51, an Indianapolis janitor. She spoke in Central Christian Church, 701 N. Delaware St., as about 100 peers enjoyed a spirited, music-filled post-vote rally.

The increase in wages and hours will lift many families out of poverty, advocates say.

Highlights of the deal are:

Higher wages. Janitors earning the Indiana minimum of $5.85 an hour will see an incremental rise. They'll earn a minimum of $7.75 by January and a minimum of $9 an hour by 2012. Those earning more than the minimum would receive incremental increases over the course of the contract of at least $1.50 an hour.

More hours. Many janitors' paychecks suffer because they are limited to an average of 4.5 hours of work. Work hours will bump up to seven hours a shift in the first two years and eight months.

Individual health insurance at a cost of $20 per month, provided through the union, starting in 2011.

Paid holidays and vacation. The contract will allow workers -- many for the first time -- paid time off from work. Janitors will receive six paid holidays per year and be able to take a one-week vacation beginning the first year of the contract.

Stacy Harris, 41, another Indianapolis janitor, called getting the contract "an important day. It's a start. As janitors, it's gotten our foot in the door."

"We'll have to wait" for some of the perks like health insurance to kick in, she added. "But at least we have something to wait for."

Call Star reporter Tom Spalding at (317) 444-6202.

INDIANAPOLIS CLERGY COMMITTEE
A Project of Interfaith Worker Justice

In accordance with our various faith traditions, we believe that dignity and just compensation are essential human rights for all workers. As religious leaders, God has called us to share a vision of reconciliation and economic equality. We invite business, labor, and political leaders to work together to make this vision a reality for the workers in our city.

STATEMENT OF PRINCIPLES

Therefore, we call upon business leaders to enact polices and practices for janitors and all low-wage workers, whether they are direct employees or contracted out, which will:

- Pay a living wage that allows workers to meet the basic needs of their families.
- Provide full health care benefits for workers and their families at an affordable rate.
- Prevent tactics which intimidate workers who want to join a union.
- Negotiate in good faith. We call upon labor leaders to:
- Make the needs of low-wage workers their primary concern.
- Be honest about services provided.
- Negotiate in good faith.

It is our prayer that the economic inequality in our city can be overcome through cooperation. It is our commitment to stand up for the rights of all low-wage workers. It is our calling to keep before this city a vision of God's justice and mercy.

BISHOP MICHAEL J. COYNER,
Indiana Area of The United Methodist Church;
REV. STEPHEN GRAY, *Regional Minister,*
Indiana-Kentucky Conf., United Church of Christ;
REV. DICK HAMM, *former Genl Min & Pres.,*
Christian Ch, Disciples of Christ, US, Canada;
REV. RICHARD L. SPLETH, *Regional Minister,*
Christian Church (Disciples of Christ) Indiana;
BISHOP CATHERINE WAYNICK,
Episcopal Diocese of Indianapolis;
REV. MMOJA AJABU,
Light of the World Christian Church;
REV. CHAD ABBOTT,
Lockerbie Central United Methodist Ch.;
REV. MICHAEL ALEXANDER,
Aldersgate United Methodist Church;
REV. LAURIE ADAMS,
Christian Church (Disciples of Christ);
REV. DR. RONALD J. ALLEN,
Christian Theological Seminary;
DR. PRESTON ADAMS, III,
Light of the World Christian Church
REV. KEVIN R. ARMSTRONG,
North United Methodist Church;
RABBI JON ADLAND,
Indianapolis Hebrew Congregation.

INDIANAPOLIS CLERGY COMMITTEE

A Project of Interfaith Worker Justice

Rev. Sharon Baker, Lockerbie Central United Methodist
Rev. Louise Baldwin Rieman, Northview Church of the Brethren
Rev. Phil Baldwin Rieman, Northview Church of the Brethren
Pastor Stan Banker, Indianapolis First Friends (Quaker)
Minister Oscar E. Banks, IV, Light of the World Christian Church
Rev. Robert S. Bates, Christian Church (Disciples of Christ)
Rev. Dr. John Bean, Downey Ave. Christian Church
Rev. Johnson A. Beaven III, Citadel of Faith Church of God in Christ
Fr. Carlton Beever, St. Philip Neri Catholic Church
Fr. Justin Belitz, O.F.M., Archdiocese of Indianapolis
Bishop T. Garrott Benjamin, Light of the World Christian Church
Rev. Jeffrey Bessler, Christ Church Cathedral (Episcopal)
Mr. J. Brent Bill, Religious Society of Friends (Quakers)
Rev. Howard Boles, Roberts Park United Methodist Church
Rev. Rayford Brown, Rock of Faith Missionary Baptist Church
Rev. Kent Burcham, Edgewood United Methodist Church
Rev. Larry Bush, Amity United Methodist Church
Rev. Audrey Borschel, Christian Church (Disciples of Christ)
Rev. Bob Cannon, Danville United Methodist Church

Rev. Dr. James M. Capers, Lamb of God Church (ELCA)
Rev. Patricia Case, Christian Church (Disciples of Christ)
Fr. Tom Clegg, Sacred Heart Catholic Church
Rev. Richard Clough, First Congregational Church
Rev. Clarinda Crawford, Bradley United Methodist Church
Fr. Larry P. Crawford, St. Gabriel the Archangel Catholic Ch.
Rev. Darrel Crouter, Central Christian Church
Rev. Canon Kate Cullinane, Christ Church Cathedral (Episcopal)
Rev. Darren Cushman-Wood, Speedway United Methodist Church
Rev. Clement T. Davis, St. Bartholomew Catholic Church
Rev. Garnett Day, Downey Ave Christian Church
Rev. Jean Denton, St. Paul's Episcopal Church
Rev. Brian Durand, St. Luke's United Methodist Church
Rabbi Sandy Eisenberg-Sasso, Congregation Beth-El Zedeck
Rev. Pat Engel, Epworth United Methodist Church
Rev. Ed Fischer, Trinity United Methodist Church
Fr. Tom Fox, O.F.M., Archdiocese of Indianapolis
Rev. Joseph Freeman, Sr., Christ the Savior Lutheran Church
Rev. Carol Fritz, Sheridan United Methodist Church
Rev. Dr. Daniel Gangler, Indiana Area, United Methodist Church
Rev. James Gentry, Indiana Area Fdtn., United Methodist Ch.
Rev. Henry Gerner, United Methodist Church
Rev. John Gibson, United Methodist Church
Rev. Betty Gilbert-Griffin, Immanuel Presbyterian Church
Fr. Jeffrey Godecker, Immaculate Heart Catholic Church
Rev. Ronald Goldfarb, St. Timothy's Episcopal Church
Fr. Todd Goodson, St. Ambrose Catholic Church
Rev. C. Mac Hamon, Castleton United Methodist Church
Rev. Dr. Adolf Hansen, St. Luke's United Methodist Church
Rev. Holly Hardsaw, Horizons of Faith United Methodist
Rev. Charles Harrison, Barnes United Methodist Church
Rev. C.J. Hawking, United Methodist Church
Rev. Rosella Helms, St. Mark's Carmel United Methodist Ch.
Rev. Dr. James Higginbothham, Earlham School of Religion
Rev. Aaron Hobbs, New Market United Methodist Church
Rev. James P. Hollis, Westview Christian Church
Rev. Jonathan Hutchinson, St. David's Episcopal Church
Rev. Bill Johnson, Avon United Methodist Church
Rev. William Keith, Indianapolis East, United Methodist Ch.
Rev. Karen King, Trinity Episcopal Church
Rev. Keith Kriesal, Our Redeemer Lutheran Church
Rev. Douglas Kriz, Speedway Christian Church
Rev. Thomas M. Kryder-Reid, Trinity Episcopal Church
Sr. Mary Ann Lechner, S.P., Sisters of Providence
Rev. Meredith Loudon, United Church of Christ
Rev. Zoila Manzanares, Christ Church Cathedral (Episcopal)
Rev. Mike Mather, Broadway United Methodist Church
Fr. John McCaslin, St. Anthony, Holy Trinity Catholic Ch.
Rev. Linda McCrae, Central Christian Church
Rev. Greg McGarvey, Carmel United Methodist Church
Rev. Linda McKiernan-Allen, First Christian Church, New Castle
Rev. Kent Millard, St. Luke's United Methodist Church
Rev. Jack Miller, Epworth United Methodist Church
Rev. Dr. Richard Moman, Christian Theological Seminary
Pastor James Mulholland, Irvington Friends Meeting
Rev. Wayne Nichols, Faith United Methodist Church
Rev. William Nottingham, Disciples of Christ, United Ch. of Christ
Rev. Bill Novak, Bethlehem Lutheran Church
Fr. Arturo Ocampo, O.F.M., St. Patrick Catholic Church
Fr. Michael E. O'Mara, St. Mary Catholic Church
Rev. David Penalva, Vida Nueva United Methodist Church
Rev. Mark J. Powell, Christian Theological Seminary
Fr. Marty Peters, Archdiocese of Indianapolis
Rev. Bonnie Plybon, Victory United Methodist Church
Rev. Steve Rasmussen, Union Chapel United Methodist Church
Rev. Robert Reister, Allisonville Christian Church
Fr. Joseph G. Riedman, Holy Spirit Catholic Church
Rev. Leon Riley, Central Christian Church

Rev. Gwendolyn Roberts, Metro Ministries, United Methodist Ch.
Imam Michael Saahir, Nur-Allah Islamic Center
Rabbi Dennis Sasso, Congregation Beth-El Zedeck
Rev. Michael Scaife, New Light Christian Church
Rev. Lisa Schubert, North United Methodist Church
Rev. Steven C. Schwab, St. Thomas Aquinas Catholic Church
Rev. Canon David I. Shoulders, The Episcopal Church
Rev. David J. Smith, Abundant Grace Evangelical Lutheran
Rev. Dr. L. Wayne Smith, Abundant Harvest United Methodist Ch.
Rev. Diane Spleth, Franklin Central Christian Church
Rev. Ned Steele, Indianapolis West, United Methodist Ch.
Rev. Kevin Stiles, Cumberland United Methodist Church
Rev. Dan Strobel, St. Andrew's Lutheran Church
Rev. George Sullivan-Davis, Christian Church (Disciples of Christ)
Rev. John Thomas, New Palestine United Methodist Church
Rev. Edgar A. Towne, emeritus, Christian Theological Seminary
Rev. Randall Updegraff, Spleth Geist Christian Church
Rev. Laurin Vance, Salem Lutheran Church
Rev. Art Vermillion, Christian Theological Seminary
Rev. Doug Walker, Rosedale United Methodist Church
Rev. Reid Walker, Zionsville United Methodist Church
Rev. Rodger Ward, Mace/New Ross United Methodist
Rabbi Lewis Weiss, Indianapolis Jewish Community
Fr. Christopher Weldon, All Saints Catholic Church
The Rev. William D. Wieland, St. Andrew's Episcopal Church
Rev. Kirsteen Wilkinson, St. Alban's Episcopal Church
Rev. Canon Alfredo Williams, Christ Church Cathedral (Episcopal)
Rev. Richard Willoughby, Promise Land Christian Church
Rev. David Wise, Otterbein United Methodist Church
Rev. Cynthia Wolfe, Bethel African Methodist Episcopal Ch.
Rev. Kevin Wrigley, Plainfield United Methodist Church
Rev. Amanda Yoder Schrock, First Mennonite Church

EMS

EXECUTIVE MANAGEMENT SERVICES, INC.

91

EMPLOYEE MANUAL
FOR HOURLY
EMPLOYEES

THE EMS GROUP

WELCOME

Executive Management Services is pleased to have you join our company and we look forward to a mutually rewarding relationship.

EMS was founded in 1989 as a commercial cleaning company in Indianapolis and has since expanded its growth to surrounding areas. The company mission is to:

1) Provide quality, full-service maintenance to area businesses
2) Continue growth not only to enhance profitability, but also to provide continued opportunity for our employees
3) Become the recognized leader in the field

EMS's objective is to be the most ethical and highest quality "Building Service Contractor" in its market areas.

People are our most important asset. We will attempt to provide the best working conditions possible and to have established policies to enhance a close working relationship with all personnel.

Again, welcome to EMS. We are glad to have you with us!

David A. Bego
President

Revised 11/30/2007
Effective 1/1/08

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I. INTRODUCTION

The purpose of this handbook is to acquaint new employees with an overview of our Company Mission and Policies.

This handbook describes important information about Executive Management Services, Inc. (EMS) and your role with the Company. You should read and understand the information contained within.

EMS has developed the following policies, practices, and procedures that help the Company provide excellent service to its customers while providing its employees with a pleasant work environment and opportunities for advancement and growth.

Although it is impossible to cover every subject in detail, this handbook sets forth general guidelines that may affect your job, your wages and your personal conduct while on the job. Questions you may have about the program or policies contained within should be directed to your supervisor, manager, or the Human Resources Department.

Although information in this handbook will be of particular interest to new or recently hired employees, long-term employees should also use this manual to reacquaint themselves with Company policy. It is your responsibility to learn and follow our Company policies.

THIS MANUAL IS ONLY A GENERAL GUIDE, IT IS NOT INTENDED TO BE AND SHOULD NOT BE CONSTRUED AS A CONTRACT. FROM TIME TO TIME THE COMPANY REVIEWS ITS POLICIES, PROCEDURES AND BENEFITS AND MAKES REVISIONS BASED UPON THE NEED FOR CHANGES. THUS, ANY POLICY, PROCEDURE OR BENEFIT OUTLINED IN THIS MANUAL MAY BE MODIFIED AT ANY TIME WITH OR WITHOUT NOTICE.

EMPLOYMENT WITH THE COMPANY IS TO BE ON AN AT-WILL BASIS AND MAY BE TERMINATED AT ANY TIME, EITHER BY THE EMPLOYEE OR THE COMPANY, WITH OR WITHOUT NOTICE OR EXPLANATION.

EQUAL EMPLOYMENT OPPORTUNITY

It is our policy to provide equal employment opportunities to all present and future employees. All employment decisions, including but not limited to hiring, compensation, training, work assignments, transfers, and promotions will be made without regard to race, color, religion, gender, age, national origin, disability, or other legally-protected status.

EMS will follow our equal employment opportunity policy in implementing all employment practices, policies, and procedures. All employees are required to comply with our EEO policy. Management fully intends to abide by the law and will, when necessary, take firm disciplinary action in accordance with this policy to ensure that our responsibility to our employees is met. Everyone employed by EMS is responsible for full cooperation in meeting these objectives.

Any person who is aware of any alleged violation of this policy should report such concerns to their supervisor or the Human Resource Manager as soon as possible. The Company will fully investigate and promptly resolve all such complaints in strict compliance with all applicable laws. Any employee violating this policy or retaliating in any way against complainants under this policy will be subject to discipline, up to and including termination of employment.

If you have any questions regarding this policy, you are encouraged to contact the Human Resources Department for assistance.

DRUG TESTING

Drug testing (if required at certain building locations) must be completed by all new hires within forty-eight (48) hours from the date of employment. The cost of the test will be incurred by EMS, unless the employee fails the drug test. This will result in immediate termination and, upon a signed assignment of wages agreement and other requisite paperwork, the cost of the test will be deducted from the employee's paycheck. Additionally, should the employee fail to complete 30 days of service with EMS for any reason, the cost of the test will be deducted from the employee's pay as permitted by law.

IV. CRIMINAL HISTORY CHECK

A criminal history check is required on all new hires and may be required on re-hires. Upon a signed assignment of wage agreement and other requisite paperwork, the cost of the criminal history check ($15.00) will be deducted from the employee's pay. Findings on the criminal history report may result in refusing to hire an applicant or termination of an already hired employee.

V. INTRODUCTORY PERIOD FOR NEW EMPLOYEES

All new employees are hired with the understanding that the first ninety (90) calendar days of employment comprise an introductory period. During this period, each employee will be evaluated by his/her supervisor to determine if the employee is a good fit for the position hired. During this period, and anytime thereafter, employment with EMS is on an at-will basis (see INTRODUCTION).

VI. GENERAL HARASSMENT POLICY

In providing a productive work environment, EMS believes that its employees should be able to enjoy a workplace free from all forms of discrimination, including harassment on the basis of race, color, religion, gender, national origin, age and disability. It is the policy of EMS to provide an environment free of such harassment.

It is against the policy of the Company for any employee, whether a manager, supervisor or co-worker, to harass another employee. Prohibited harassment occurs when verbal or physical conduct defaming or showing hostility towards an individual because of his/her race, color, religion, relatives, friends or associates creates or is intended to create an intimidating, hostile or offensive working environment; interferes or is intended to interfere with an individual's work performance; or otherwise indirectly adversely affects an individual's employment opportunities.

Harassing conduct includes, but is not limited to:

- Epithets, slurs, negative stereotyping, or threatening, intimidating or hostile acts which relate to race, color, religion, gender, national origin, age, or disability.

- Written or graphic material that defames or shows hostility or aversion towards an individual or group because of race, color, religion, gender, national origin, age, or disability.

Any employee found to have engaged in harassment of any kind will be subject to disciplinary action up to and including discharge.

Any employee who believes that he or she has been harassed in violation of this policy should report the incident immediately to your supervisor or to the Human Resources Manager at EMS. No victim retaliation or discrimination will result from any good-faith complaint made under this policy.

A thorough and impartial investigation of all complaints will be conducted in as timely and confidential a manner as possible. Any employee of the Company who has been found, after appropriate investigation, to have harassed another employee in violation of this policy will be subject to disciplinary action up to and including discharge.

SEXUAL HARASSMENT POLICY

It is the policy and intent of EMS that all employees be free from sex discrimination in the form of sexual harassment and sex-based harassment. It is against the policy of EMS for any employee, whether a manager, supervisor, or co-worker, to sexually harass another employee. Sexual harassment or sex-based harassment occurs when unwelcome conduct of a sexual nature becomes a condition of an employee's continued employment, affects other employment decisions regarding the employee, or creates an intimidating, hostile, or offensive working environment.

Sexual and sex-based harassment may include, but is not limited to:

1. Verbal harassment, such as sexual innuendos, suggestive comments, jokes of a sexual nature, sexual propositions, and threats
2. Unwelcome sexual advances
3. Unwelcome physical contact
4. Non-verbal conduct, such as a display of sexually suggestive objects or pictures, leering, whistling, or obscene gestures
5. Demands for sexual favors accompanied by implied or overt promises of preferential treatment or threats concerning an individual's employment status
6. Acts of physical aggression, intimidation, hostility, threats, or unequal treatment based on sex (even if not sexual in nature)

If any employee experiences or knows of such activity he/she is encouraged to report the incident as follows:

1. Report the incident immediately to your supervisor. If he/she is unavailable or is the subject of the complaint, please go to the Human Resources Department at EMS.
2. The complaint may be made verbally or in writing. Please be as specific as possible in regards to the type of conduct, time, date and place of the offense, and any/all individuals involved.

No victim retaliation or discrimination will result from any good-faith complaint made under this policy.

A thorough and impartial investigation of all complaints will be conducted in as timely and confidential a manner as possible. Any employee found, after appropriate investigation, to have engaged in sexual harassment of any kind will be subject to disciplinary action up to and including discharge.

VIII. STATEMENT ON UNIONISM

EMS is a union-free company and, as such, employees may deal directly with management. It is not necessary for you to belong to any union in order to benefit from secure and profitable work with EMS. Indeed, we believe that a union would serve only to hurt our profitability and thus our job security.

The level of wages and benefits depends ultimately on worker productivity, flexibility, and quality. In effect, EMS has good wages and benefits because of our productive and hard-working employees. Unions can adversely affect production by narrow work classifications, silly grievances, strikes, and inflexibility.

It is our opinion that wherever there are unions, there is also trouble, strife and discord and that a union would not work to our employees' benefit, but to their serious harm. It is our positive intention to oppose unionism by

every proper and lawful means.

If union representatives should ever approach you, we would appreciate your seeking advice, counsel, and information from your supervisor or the Human Resource Department on any question you may have on this subject.

PROMOTION

Whenever possible, current employees will be considered first for open positions. Decisions regarding promotion will be made on the basis of experience, ability, training, potential, past performance and length of service.

DRESS CODE

Uniforms are to be worn if required by the Company at your assigned location. It is a requirement that any employee wearing a uniform have the EMS logo visible and not covered in any fashion. The following items of clothing are prohibited: shorts, sleeveless or muscle shirts, crop tops (exposing stomach), shirts or tops advertising any message relating to alcohol, drugs or sex. Sandals or slippers exposing the foot may not be worn. Shoe soles must be of a hard material. Proper personal hygiene practices must be maintained to provide a neat and clean appearance.

Violators of our dress code will normally be sent home to change into appropriate attire and will not be paid for the time away from work unless the employee is salaried exempt. Repeated violations will result in discipline. Management reserves the right to determine what dress is appropriate for work and if you have any questions or concerns whether certain attire is appropriate please consult your supervisor or the Human Resource Department.

IF YOU NEED HELP WITH A PROBLEM

From time to time complaints may arise by employees. We encourage you to first discuss any problems with your supervisor, but if they are unavailable or are the subject of the complaint you can contact the EMS Human Resources Department as outlined below:

1. Submit the complaint in writing providing details, your name and address, account name, and name of your supervisor to the address below:

   EMS Services of Indiana , Inc.
   Human Resources Department
   8071 Knue Road
   P.O. Box 501818
   Indianapolis, IN 46250

2. Or if you prefer you can contact the EMS Human Resources Department via phone at the below listed numbers:

   (317) 594-6000 (Local) or
   1 (800) 357-8900 (Toll Free)

XII. WORK WEEK

The Company's work week begins at 12:01 a.m. on Monday and ends at 12:00 a.m. (midnight) the following Sunday.

XIII. REPORTING FOR WORK / REPORTING ABSENCES

Your attendance at work on time every scheduled work day is very important. Your supervisor, co-workers and our customers depend upon you to be reliable. If for any reason an employee is unable to report as scheduled, it is necessary to call your supervisor or the office no later than three (3) hours before the beginning of your shift. Failure to do so may result in disciplinary action up to and including discharge.

Transportation each day is your responsibility and transportation problems do not constitute an excused absence or tardy.

MEDICAL DOCUMENTATION

A physician's statement may be required in order for an absence due to illness, to be excused or when absence occurs due to illness for three (3) or more consecutive work days. In addition you may be required to provide a physician's statement following return to work from a non-work related injury, illness, or surgery to verify your ability to return to regular duty work.

ABANDONMENT OF EMPLOYMENT - NO CALL/NO SHOW

Any employee who fails to report to work or to call with explanation for three (3) consecutive days will be considered to have abandoned his or her employment and will be considered to have voluntarily resigned without notice.

ATTENDANCE AND TARDINESS

Each employee is expected to report to work on time and continue to work through the end of your scheduled work shift. Excessive absenteeism, tardiness, leaving early, and/or taking extended breaks or lunch periods will be subject to disciplinary action up to and including discharge.

ATTENDANCE POLICY

Violations of the following EMS attendance policy may result in disciplinary action up to and including discharge

1. Two (2) No Call/No Shows during a thirty (30) day period.
2. Three (3) unexcused absences during a thirty (30) day period.
   a. Unexcused absences are defined as any absence for any reason other than what is defined below.
      Excused Absences
      - Jury Duty
      - Military
      - Medical - a doctor's note may be required to excuse absences due to illness, limit seven (7) within a year (excluding pre-approved Leave of Absence, FMLA, or ADA approved leave.)
      - Personal - This includes only illness or death in the family
3. Any combination of three (3) cases of unexcused absences or no call/no shows during a thirty (30) day period
4. Seven (7) or more unexcused absences within a year
5. Any combination of seven (7) or more cases of unexcused absences or no call/no shows within a year
6. Three (3) cases of tardiness within a thirty (30) day period
7. Any combination of 3 cases of absences or tardiness during a thirty (30) day period

8. Any combination of seven (7) or more cases of absences or tardiness per year

LEAVES OF ABSENCE

Types: Jury duty, military, medical, personal.

Requirements:

1. Authorization in advance from your supervisor or manager.
2. For jury duty, you are required to submit court documentation prior to the leave being approved. It is your responsibility to keep your supervisor informed about the amount of time required for jury duty. You are expected to report for work when doing so does not conflict with court obligations.
3. Leaves for military service will be approved in compliance with federal and state law. You should notify your supervisor promptly on receiving notice of military service.
4. Medical: a doctor's note may be required in order to have a leave of absence of three days or more authorized, to have a leave extended, and upon release to return to work.
5. Personal: These leaves may include illness in the family, death in the family, or time off with the family. The company may require documentation to verify the stated reason for the leave.
6. You should return to work with any requested documentation on the established return to work date. If you do not return by the established return to work date it will be treated as a voluntary resignation.

ELECTRONIC TIMEKEEPING

Certain buildings have time clocks or telephone timekeeping. Each employee is required to record his/her start and ending time as he/she begins work and ends work.

Misrepresentation or falsification of time worked (either your own time or that of another employee) will be grounds for discipline up to and including

termination of employment.

Any timekeeping errors should be reported immediately to your supervisor who will attempt to promptly correct legitimate errors.

NOTE: Failure to properly record hours worked can lead to delayed-payment or non-payment of hours worked.

V. CHANGE OF STATUS

Employee personnel records, as required by law and deemed essential for efficient operations, will be maintained by the company. Employees are requested to promptly report to their supervisor or the Human Resources Department any changes of status in the following: name, address, phone number; the name, birth date, relationship, and number of dependents (for tax purposes); driver's license, including suspension for any reason (e.g. driving while intoxicated); selective service status; persons to notify in case of emergency; and/or physical or other limitations which prevent you from substantially performing your job.

GENERAL WORK RULES

A. When employees engage in conduct contrary to the Company's interests, they will receive discipline appropriate for such misconduct. The degree of discipline in each case, up to and including discharge, will be determined by the severity of the situation. The Company will normally follow a progressive disciplinary system using a coaching session, verbal warning, written warning and ultimately termination of employment. However, if an employee engages in misconduct deemed serious enough by the Company, in its sole discretion, the employees may be subject to immediate termination without administration of the sequential steps of discipline. The following violations may result in disciplinary action up to and including discharge:

1. Stealing Company's, Customer's or other employee's property or removing anything from the building without prior approval from security and EMS Management. This includes items in the trash.
2. Falsifying any record of the company, including but not limited to: employee applications, company payroll records, sign-in sheets or other personnel records. The omission of information may also be considered falsification.
3. Insubordination or disregard for authority of our customer's employees or patrons, our own management and employees. Refusing to perform work or disregarding the instructions of Company or Customer management.
4. Coercing, threatening, intimidating, or using rude or disrespectful language, gestures or behavior towards a Company or Customer employee or patron at any time.
5. Engaging in fighting, malicious behavior, or other conduct endangering the safety of another Customer or Company employee or patron.
6. Attempting to or actually destroying or doing malicious damage to Company's, Customer's or co-worker's property.
7. Being in the possession of or under the influence of narcotics, alcohol, or other intoxicants on Company or Customer premises at any time.
8. Keeping, maintaining or being in the possession of weapons or explosives on Company or Customer property at any time.
9. Smoking is prohibited while on the work site except during an authorized break or lunch period and only in designated smoking areas.
10. Sleeping at the job site at any time during work hours.
11. Falsifying, withholding, interfering, or refusing to cooperate in the investigation of, or giving testimony relative to, any accident, theft or other situation being investigated.
12. Producing work of sub-standard quality or intentionally limiting or restricting your work output or failure to complete assigned tasks in allotted time period.
13. Any misrepresentation or falsification of time worked (either your own time or that of another employee), including knowingly swiping, entering, or signing in or out for another employee, or having someone else swipe, enter, or sign you in or out.

14. Not clocking or signing in or out at the beginning or end of a shift.

15. Leaving the job site early before the end of the shift without permission from a supervisor.

16. Taking unauthorized breaks and/or transacting personal business during working hours.

17. Eating, drinking, or smoking in the building while on an unauthorized break or in an unauthorized area.

18. Violation of Company policies listed elsewhere in this manual.

19. Leaving your assigned work area without approval from your supervisor. At the end of your shift, report to your supervisor prior to leaving the building.

20. All employees must enter and exit facilities through entrances and exits designated by our customers. Additionally, you must sign in and check any personal items with the guard or supervisor. These items may be picked up at the end of the shift. Personal items, including pagers and cell phones, are not allowed in the building.

21. You must submit to a random personal or package search at any time when entering the building, during the work shift, or when leaving the building.

22. Unauthorized use of Company or Customer phones or computers.

23. You may not post, remove, or deface any notices on bulletin boards on Company or Customer property at any time.

24. You may not perform personal work on Company or Customer property, either during or after working hours.

25. Other than necessary for cleaning, do not touch customer equipment, including but not limited to telephones, fax machines or copiers. In addition, you may not open drawers or go through desk drawers, files or other private areas, or take anything, including but not limited to paper, pop, candy, etc.

26. Gambling on Company or Customer property at any time.

27. Obtaining either non-occupational sickness benefits or Worker's Compensation benefits through fraud. This is unlawful and will be treated accordingly.

28. Trespassing on Company or Customer property at any time.

29. Permitting unauthorized personnel to enter Company or Customer property or buildings without permission from your supervisor.

30. Disclosure of EMS or customer confidential information.

31. Any other reason deemed necessary by your supervisor.

XVI. SAFETY REQUIREMENTS

1. Report all unsafe conditions in the workplace to your supervisor.

2. Immediately report all injuries (no matter how minor) to your supervisor. If outside medical treatment is required, the employee must go to a company-approved facility and must be accompanied by the supervisor.

3. Do not use damaged or unsafe equipment. Do not use any equipment or supplies/chemicals that you have not been trained to use.

4. Never attempt to repair, tamper with, or remove parts from equipment unless you have been trained and instructed to do so by your supervisor.

5. All equipment and service closets must be kept neat and clean.

6. Mix cleaning chemicals and preparations only as directed by your supervisor in accordance with label instructions. Make sure all bottles are clearly labeled. Never mix bleach with ammonia or toilet bowl cleaner.

7. Report frayed cords and worn plugs to your supervisor. Only extension cords approved or supplied by the supervisor will be used.

8. Utility gloves are to be worn by all cleaning personnel when cleaning restrooms, nurses stations, cafeterias, and when working with chemicals. Gloves showing wear are to be discarded and new ones obtained from your supervisor.

9. Broken glass is never to be picked up by hand. It is to be swept into a dust pan, and then placed in trash receptacles without touching the glass. The rule to follow is - never pick up trash of any kind by hand. Dump it from the receptacle into your container.

10. Trash receptacles are never to be over filled. Never push trash down by hand. Use the end of a broom or some other like instrument.
11. All floor machines will be turned off, unplugged and laid down when not in use. Never leave a floor machine unattended while plugged in.
12. Wet or slippery floor conditions must always be posted by signs.
13. Advise your supervisor if you encounter blood in your area.

XVII. WAGES

PAY PERIOD

Each pay period is two (2) weeks long. Each week begins on Monday and ends on the following Sunday night at midnight. Paychecks will be distributed by your supervisor at the end of your shift every other Friday.

LOST OR DAMAGED PAYCHECKS

If you lose or damage your paycheck so that it cannot be cashed, you will be charged a stop-payment fee and an administrative fee in order for the Company to issue a second check. Such loss or damage should be reported to the office within seventy-two (72) hours of receiving the original paycheck.

WAGE ADVANCES

No wages will be advanced to any employee for any reason. Any employee who elects to loan money to a fellow employee is acting independently and not as an agent of the Company. EMS is not responsible for any losses due to these types of actions.

PAYROLL DEDUCTIONS

Your paycheck stub shows various deductions for taxes, insurance, etc. If you have any questions concerning any of these deductions, contact the Payroll Department.

OVERTIME

All employees are expected to work assigned overtime. All overtime must

be authorized by your supervisor in advance. If overtime is performed without authorization, you will be subject to disciplinary action up to and including discharge.

FINAL PAYCHECK

Upon resignation or termination from the Company, you must pick up your final paycheck at the EMS office, 8071 Knue Road (if your work site was in the Indianapolis area). You may pick up your final paycheck after 1:00 p.m. on **"Payroll Friday."** You must present a picture I.D. when picking up your check. You must return all company property (e.g., uniforms, pagers, etc.) prior to your final check being released. If you feel that your paycheck is incorrect, ask the Human Resources Department for a "Paycheck Resolution Form" to complete.

XVIII. BENEFITS

INSURANCE

Our benefit program is designed to assist you and your family with the expenses of illness, accident, or death.

You become eligible for coverage following six (6) months of employment. Medical, dental and life insurance are available to you through payroll deduction, provided you work an average of thirty (30) hours per week.

Insurance outlines, enrollment forms, and other materials are available from the Human Resources Department.

HOLIDAY PAY

EMS provides paid holidays for the employees (see your supervisor) after one (1) year of employment. Effective 01/01/2007 EMS instituted Holiday pay awarded to all full-time hourly (30 hours or more per week) employees if the employee works his/her scheduled shift the day before and the day after the holiday (no exceptions). Employee will only be paid for the day on which the holiday falls. Should the facility close for days surrounding the holiday the employee will not be paid for those days off.

The employee receives holiday pay corresponding to the normal work day:

Example: 8 hour normal work shift = 8 hours holiday pay

The following Holidays will be paid as long as all requirements are met:

- New Year's Day
- Memorial Day
- Independence Day (4th of July)
- Labor Day
- Thanksgiving
- Christmas Day

VACATION PAY

1. Effective 01/01/2007 EMS instituted vacation benefits for all full-time, hourly employees. (Full-time = 30 hours per week)
2. Full-time hourly employees become eligible for one (1) week of vacation after one (1) year of employment (based on their hire and rehire date). For example, an employee hired on 7/28/00 becomes eligible for vacation on 7/28/01.
3. No more than one (1) week of vacation is earned or accrued, regardless of length of service.
4. The amount of vacation hours earned is based upon the average amount of hours worked, up to a maximum of 40 hours per week. For example, if an employee regularly works six (6) hours per night five (5) days per week then he/she are eligible for thirty (30) hours of vacation after their anniversary date.
5. Vacation requests must be turned in to the supervisor/manager at least thirty (30) days prior to the time requested.
6. No more than one (1) employee from any account is to be on vacation at one time.
7. The full-time hourly vacation program is administered on an anniversary basis. Vacation is earned upon the anniversary date of hire and must be used prior to the following anniversary date. For example, an employee hired on 7/28/00 becomes eligible for one (1) week of vacation on

7/28/01. This vacation must be used between 7/28/01 and 7/28/02. Vacation cannot be carried over into the next anniversary year.

8. Vacation pay will not be paid in lieu of time off.
9. Vacation earned but not used at the time of employment termination will not be paid at the time of separation.

XIX. WORK RELATED INJURIES AND ILLNESSES

If you sustain an injury or contract an occupational disease in the course of employment, you may be eligible for worker's compensation benefits. All work related injuries (no matter how minor) must be reported to your supervisor or the Human Resources Department immediately on an Incident Report Form.

STEPS FOR REPORTING WORK RELATED INJURIES

1. Notify your supervisor of the injury immediately.
2. The supervisor completes an Incident Report. The supervisor and injured employee, as well as any witnesses, sign the report. The report is submitted to the Human Resources Department within 24 hours.
3. If outside medical treatment is sought, the employee must go to a company-approved medical facility and must be accompanied by the supervisor or manager. All employees injured on the job will be required to complete a post accident drug screen at the time of treatment.

XX. FAMILY AND MEDICAL LEAVE ACT

A. This Act became law on August 5, 1993. All employees who meet the following criteria are eligible for the leave:

1. Must have been employed by EMS for at least twelve (12) consecutive months.
2. Must have worked at least 1,250 hours during the previous twelve (12) month period (an average of twenty-four (24) hours per week);

and.

3. Must work at a facility in which at least 50 employees are employed by the Company either at that facility or within 75 miles of that facility.

B. Leave Year: For purposes of this policy, the last year within which an eligible employee may take his/her twelve (12) weeks of FMLA-protected leave means the calendar year.

C. Covered reasons are:

1. To care for a newborn child for a period up to twelve (12) months after the birth of the child.

2. To care for a newly placed adopted or foster child during a period of up to twelve (12) months after the placement.

3. To care for the employee's spouse, child, or parent if that individual has a serious health condition.

4. The employee's own serious health condition.

D. Serious Health Condition: For purposes of determining whether an employee or his/her spouse, child, or parent has a serious health condition, such condition includes any injury, illness, impairment, or physical or mental condition that requires either in-patient care in a medical facility (i.e., overnight hospitalization) or continuing treatment by a health-care provider. These terms are construed by the Company in accordance with applicable federal laws and regulations.

E. Compensation: Generally, FMLA leave is not paid. However, eligible employees are required to take any accrued, unused paid vacation leave or other available paid leave in lieu of taking unpaid leave under the FMLA. This paid leave will run concurrently with FMLA leave and will be counted towards the 12 weeks of FMLA leave available to the employee.

F. Intermittent or Reduced Hours Leave: In the case of leave taken to care for a seriously ill spouse, child, or parent; or due to the employee's own serious health condition, an employee may take leave intermittently (i.e., periodically) or on a reduced hours schedule (i.e., reduced number of working hours per day or per week) only when such leave is medically

necessary, as certified by the employee's or family member's health-care provider. Otherwise, such leave is not permitted except at the sole discretion of the Company. An employee who takes leave intermittently or on a reduced leave schedule may be temporarily transferred to a position for which the employee is qualified to better accommodate that leave.

G. Job and Benefits Security: An eligible employee who takes leave under the FMLA and who returns to work before his/her annual FMLA entitlement has expired will be restored to the position he/she held when the leave commenced, or to an otherwise equivalent position with respect to pay, benefits, and other terms and conditions of employment, unless the employee would no longer have been employed in such a position had the employee not taken such leave. Additionally, any unused employment benefits that accrued to an eligible employee prior to the commencement of leave will be restored upon return from FMLA leave.

H. Continuation of Group Health Plan Coverage: Group health plan coverage will be maintained by EMS during an eligible employee's period of FMLA leave to the extent and under the same circumstances as it ordinarily is furnished to that employee. Premium payments should be made to [payroll] on [insert] of each month. Human Resources will notify eligible employees concerning the amount of each premium payment. Failure to pay such premiums during leave may result in the loss of health coverage. An eligible employee who fails to return to work after the expiration of the FMLA leave period for reasons that are not beyond his/her control will be expected to reimburse EMS for health-care provided premiums paid by the Company during the leave period.

I. Procedures established by EMS are as follows:

1. You must provide at least thirty (30) days notice in writing to your supervisor (as required by the law). If you are unable to give such notice because the need for leave is unforeseeable, then you must give as much notice as practicable. Typically, this will mean giving notice to the Company within one or two working days of learning that FMLA leave must be taken. Any employee who fails to give the required notice may be delayed in receiving authorization for leave. Give the date you request the leave to start and the estimated date of return.

2. A Health Care Provider Certificate to establish the medical necessity

for a leave is required to be signed by a licensed physician. This certification must be returned to the Company within 15 days after the employee gives notice of his/her intent to take FMLA leave, and must contain the following information:

- The date on which the serious health condition commenced
- The probable duration of the condition
- The treatment regiment prescribed
- Any appropriate medical facts within the health-care provider's knowledge regarding the condition
- If applicable, a statement that you are needed to provide care for your spouse, child, or parent and an estimated duration of such need
- If applicable, a statement regarding the medical necessity of intermittent or reduced hours schedule leave.

Failure to return this certification in a timely manner may result in delays in securing authorization for leave, and failure to return the certification at all will preclude the employee from taking leave.

EMS may also require, at its own expense, a second and third health-care provider opinion if there is a question as to the validity of the certification provided by the employee.

3. An eligible employee also may be asked to furnish EMS with subsequent health-care provider certifications on a reasonable basis during the employee's leave period. An eligible employee's failure to furnish subsequent certifications may result in termination of the employee's right to leave.

4. A medical release to establish "Fitness For Duty" is required upon return to work. Failure to submit such a release will preclude you from being restored to your employment with the Company.

E. Non-discrimination/Non-Retaliation: EMS will not: (1) interfere with, restrain, or deny the exercise of any right under the FMLA; (2) discharge or discriminate against any person for opposing any practice made unlawful by the FMLA; or (3) discharge or discriminate against any person for his/her involvement in any proceeding related to the FMLA.

I. UNIFORMS

Uniforms will be required to be worn at the building where you are assigned. When required to wear uniforms the cost of the uniform rental shall be borne by the employee. The weekly rental cost will be deducted from your paycheck after an assignment of wages agreement and other requisite paperwork is signed. Failure to return uniforms when employment is terminated will result in the cost of the uniforms being deducted from your final paycheck as permitted by law.

XXII. SAFETY SHOES

Some buildings require you to purchase and wear steel-toed safety shoes. If this is a requirement, the following will be provided:

1. EMS will pay an amount up to $35.00 per year toward the purchase of the shoes.
2. The balance (if any) of the cost of the shoes will be the responsibility of the employee and an assignment of wages agreement and other requisite paperwork will be signed prior to payroll deduction.
3. Payroll deduction will be $10.00 per pay until the balance is satisfied.
4. Should employment end prior to shoes being paid in full, the balance due will be deducted from the final paycheck.
5. If the employee does not remain employed for thirty (30) days from the date of purchase, the full purchase price will be deducted from the final pay.

XXIII. SUBSTANCE ABUSE POLICY

PURPOSE

EMS, Inc. is committed to providing a safe and productive work environment. We also expect our employees to report to work each day fit to perform their jobs. To meet these objectives, as well as our obligations under applicable federal and state laws, we must take a firm and positive stand against substance abuse. This policy is intended to insure a drug-free work environment for the benefit of our employees and customers.

POLICY STATEMENT

The unlawful manufacture, distribution, dispensation, possession, being under the influence of, or use of a controlled substance or alcohol while on Company or Customer premises or in the performance of services for the Customer is strictly prohibited. As a condition of continuing employment with EMS, each employee must:

1. Abide by the terms of this policy; and
2. Notify the Company of any criminal drug statute conviction for a violation occurring in the Company's workplace no later than five (5) days after such conviction.

Any violation of this policy will result in either discipline, up to and including discharge, and/or a requirement of satisfactory participation in a drug abuse or alcohol assistance or rehabilitation program, depending upon the nature and seriousness of the offense.

All performance shortcomings, prohibited conduct, and attendance problems will result in discipline pursuant to the Company's normal policies independently of any drug or alcohol implications or causes.

TESTING AND TREATMENT

Prospective new employees may be tested for the use of illegal drugs and controlled substances. When required, all new hires must complete the drug test within forty-eight (48) hours of date of employment. Applicants who refuse to complete the paperwork or submit to the drug test, or those who test positive, will not be eligible for employment and will be informed accordingly. Whenever the Company suspects that an employee's work performance or on-the-job behavior may be affected by alcohol or drugs, the Company may require that the employee submit to a blood test, urinalysis, or drug/alcohol test. Any employee refusing to submit to such test will be subject to immediate termination. In addition, all employees hurt on the job will be required to submit to a drug test.

At the Company's discretion, you may be required to submit to random drug testing. Should you be selected to submit to a test, you will be instructed where to proceed for the test. Any employee refusing to submit to

such a test will be subject to immediate termination.

XXIV. REFERENCE REQUESTS

All requests for an employment reference must be in writing and directed to the Payroll Department. No other manager, supervisor, or other employee is permitted to provide a reference for current or former employees without prior authorization from the Human Resources Department.

EMS's general policy regarding references for employees who have left the Company is to disclose only dates of employment and the title of the last position held. Upon written authorization from the employee, the Company may also provide a prospective employer with information regarding the amount of compensation last earned. No further information will be disclosed to third parties without an executed release holding the Company and the third party harmless for such disclosure and its use. EMS reserves the right, at its discretion, not to respond to a request for additional information.

XXV. CONFIDENTIALITY

All communications, whether verbal or written, about the Company and its Customers are to be treated as confidential. Avoid discussing Company and Customer business and programs to those not employed by EMS.

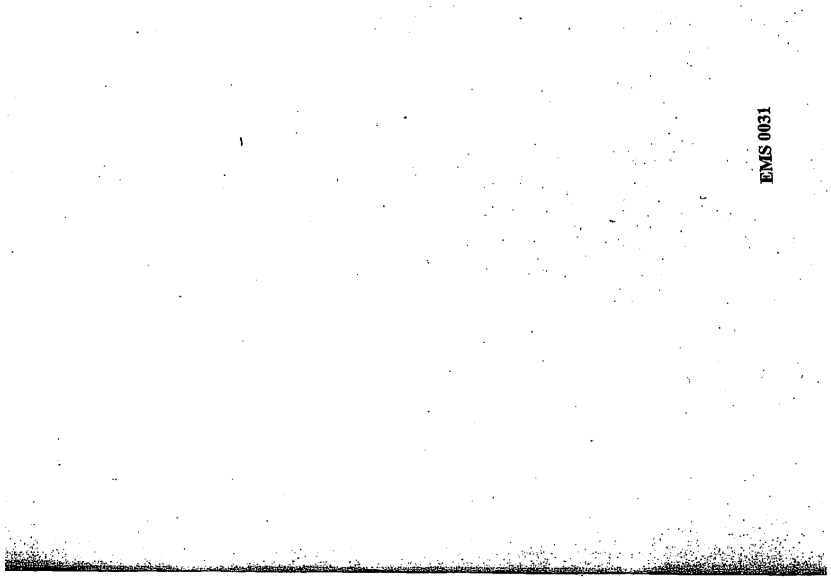
XXVI. SUMMARY

The commercial cleaning industry is a demanding and high pressure profession. Each person is valuable to the Company and each job is important! Therefore, expectations are high. EMS prides itself on the quality and professionalism of its staff. The company recognizes the importance of each person and his/her importance to the successful operation of the Company.

Important Phone Numbers

EMS 0030

Employee Information



My Notes

[Questions submitted for the record and their responses follow:]

U.S. CONGRESS,
Washington, DC, August 5, 2011.

Mr. JONATHAN C. FRITTS,
Morgan Lewis, 1111 Pennsylvania Avenue, NW, Washington, DC 20004-2541.

DEAR MR. FRITTS: Thank you for testifying at the May 26, 2011, Subcommittee on Health, Employment, Labor, and Pensions hearing entitled, "Corporate Campaigns and the NLRB: The Impact of Union Pressure on Job Creation." I appreciate your participation.

Enclosed are additional questions submitted by Committee members following the hearing. Please provide written responses no later than August 19, 2011, for inclu-

sion in the official hearing record. Responses should be sent to Benjamin Hoog of the Committee staff who may be contacted at (202) 225-4527.

Thank you again for your contribution to the work of the Committee.

Sincerely,

PHIL ROE, *Chairman,*
Subcommittee on Health, Employment, Labor, and Pensions.

QUESTIONS FROM REPRESENTATIVE ROBY

Representing a district that is in a Right-To-Work State, the current activist agenda of the National Labor Relations Board greatly concerns me. Congress has a responsibility to ensure the NLRB objectively applies the law written by the people's elected representatives. Congress must also work to ensure labor interests are not undermining an employer's efforts to create jobs. At a time when more than 14 million individuals are unemployed and searching for work, public officials in Washington should look to provide greater certainty to America's employers so they can grow their businesses and create new jobs, not hinder them. Unfortunately, the recent rulings and proceedings of the NLRB have demonstrated otherwise.

1. In your testimony you highlighted the controversial Boeing case before the NLRB. In your opinion, does this case threaten Right-To-Work states and their ability to compete with states that are Non-Right-To-Work states?

2. If the NLRB rules in favor of the International Association of Machinists & Aerospace Workers, do you foresee business owners less likely to open or expand their businesses into Right-To-Work states?

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August 19, 2011

VIA E-MAIL AND FIRST CLASS MAIL

Benjamin Hoog
Legislative Assistant
Committee on Education and the Workforce
U.S. House of Representatives
2181 Rayburn House Office Building
Washington, D.C. 20515-6100

Re: Responses to Questions for the Record

Dear Mr. Hoog:

As requested by Chairman Roe by letter dated August 5, 2011, this letter sets forth my responses to the additional questions submitted by Representative Roby regarding the May 26, 2011 hearing before the Subcommittee on Health, Employment, Labor and Pensions on "Corporate Campaigns and the NLRB: The Impact of Union Pressure on Job Creation".

Questions from Representative Roby:

Representing a district that is in a Right-To Work State, the current activist agenda of the National Labor Relations Board greatly concerns me. Congress has a responsibility to ensure the NLRB objectively applies the law written by the people's elected representatives. Congress must also work to ensure labor interests are not undermining an employer's efforts to create jobs. At a time when more than 14 million individuals are unemployed and searching for work, public officials in Washington should look to provide greater certainty to America's employers so they can grow their businesses and create new jobs, not hinder them. Unfortunately, the recent rulings and proceedings of the NLRB have demonstrated otherwise.

1. In your testimony you highlighted the controversial Boeing case before the NLRB. In your opinion, does this case threaten Right-To-Work states and their ability to compete with states that are Non-Right-To-Work states?

Response:

If the NLRB's Acting General Counsel prevails in the Boeing litigation, it will set a precedent for challenging efforts by employers to establish new facilities or to relocate work that is currently performed by union-represented employees. Frequently, the union-represented employees are located in non-Right-to-Work states and the employer, for legitimate business reasons, may seek to open the new or relocated facility in a Right-to-Work state. The Boeing litigation could set a precedent for challenging those types of business decisions, which may discourage employers from establishing new facilities in Right-to-Work states due to concerns about the potential for a Boeing-type unfair labor practice charge and the extraordinarily burdensome remedy sought in that case.

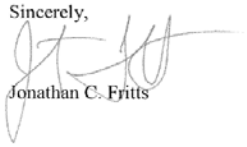
2. If the NLRB rules in favor of the International Association of Machinists & Aerospace Workers, do you foresee business owners less likely to open or expand their businesses into Right-To-Work states?

Response:

Yes, if the NLRB's Acting General Counsel prevails in the Boeing case, I believe that employers who have union-represented workforces will be cautious about expanding their businesses in Right-to-Work states, for the reasons stated in my response to the question above. The Boeing case is especially unfortunate because, as the Acting General Counsel found in his investigation, Boeing's collective bargaining agreement with the International Association of Machinists & Aerospace Workers clearly recognized Boeing's right to establish new facilities in other locations. Therefore, even if an employer negotiates a collective bargaining agreement that clearly recognizes the employer's right to establish a new facility in other locations, including a Right-to-Work state, the Boeing litigation sets a precedent for challenging the employer's decision to exercise that right.

Thank you again for the opportunity to testify before the Subcommittee. Please let me know if I can be of further assistance.

Sincerely,



Jonathan C. Fritts

[Whereupon, at 11:58 a.m., the subcommittee was adjourned.]

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